

HR 5 EH
105th CONGRESS
1st Session

AN ACT

To amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the Individuals with Disabilities Education Act Amendments of 1997.

TITLE I--AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:

PART A--GENERAL PROVISIONS

SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

- (a) SHORT TITLE- This Act may be cited as the Individuals with Disabilities Education Act.
- (b) TABLE OF CONTENTS- The table of contents for this Act is as follows:

PART A--GENERAL PROVISIONS

- Sec. 601. Short title; table of contents; findings; purposes.
- Sec. 602. Definitions.
- Sec. 603. Office of Special Education Programs.
- Sec. 604. Abrogation of State sovereign immunity.
- Sec. 605. Acquisition of equipment; construction or alteration of facilities.
- Sec. 606. Employment of individuals with disabilities.
- Sec. 607. Requirements for prescribing regulations.

PART B-- ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

- Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.
- Sec. 612. State eligibility.
- Sec. 613. Local educational agency eligibility.
- Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.
- Sec. 615. Procedural safeguards.
- Sec. 616. Withholding and judicial review.
- Sec. 617. Administration.
- Sec. 618. Program information.
- Sec. 619. Preschool grants.

PART C--INFANTS AND TODDLERS WITH DISABILITIES

- Sec. 631. Findings and policy.
- Sec. 632. Definitions.
- Sec. 633. General authority.
- Sec. 634. Eligibility.
- Sec. 635. Requirements for statewide system.
- Sec. 636. Individualized family service plan.
- Sec. 637. State application and assurances.
- Sec. 638. Uses of funds.
- Sec. 639. Procedural safeguards.
- Sec. 640. Payor of last resort.
- Sec. 641. State Interagency Coordinating Council.
- Sec. 642. Federal administration.
- Sec. 643. Allocation of funds.
- Sec. 644. Federal Interagency Coordinating Council.
- Sec. 645. Authorization of appropriations.

PART D-- NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

SUBPART 1-- STATE PROGRAM IMPROVEMENT GRANTS FOR CHILDREN WITH DISABILITIES

- Sec. 651. Findings and purpose.
- Sec. 652. Eligibility and collaborative process.
- Sec. 653. Applications.
- Sec. 654. Use of funds.
- Sec. 655. Minimum State grant amounts.
- Sec. 656. Authorization of appropriations.

SUBPART 2-- COORDINATED RESEARCH, PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, SUPPORT, AND DISSEMINATION OF INFORMATION

- Sec. 661. Administrative provisions.

CHAPTER 1--IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRANSITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES THROUGH COORDINATED RESEARCH AND PERSONNEL PREPARATION

- Sec. 671. Findings and purpose.
- Sec. 672. Research and innovation to improve services and results for children with disabilities.
- Sec. 673. Personnel preparation to improve services and results for children with disabilities.
- Sec. 674. Studies and evaluations.

CHAPTER 2--IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRANSITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES THROUGH COORDINATED TECHNICAL ASSISTANCE, SUPPORT, AND DISSEMINATION OF INFORMATION

- Sec. 681. Findings and purposes.
- Sec. 682. Parent training and information centers.
- Sec. 683. Community parent resource centers.
- Sec. 684. Technical assistance for parent training and information centers.
- Sec. 685. Coordinated technical assistance and dissemination.
- Sec. 686. Authorization of appropriations.
- Sec. 687. Technology development, demonstration, and utilization, and media services.

1 (c) FINDINGS.--The Congress finds the following:
2

- 3 (1) Disability is a natural part of the human experience and in no way diminishes the right of
4 individuals to participate in or contribute to society. Improving educational results for children
5 with disabilities is an essential element of our national policy of ensuring equality of
6 opportunity, full participation, independent living, and economic self-sufficiency for
7 individuals with disabilities.
8
- 9 (2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975
10 (Public Law 94-142)--
11
12 (A) the special educational needs of children with disabilities were not being fully met;
13
14 (B) more than one-half of the children with disabilities in the United States did not receive
15 appropriate educational services that would enable such children to have full equality of
16 opportunity;
17
18 (C) 1,000,000 of the children with disabilities in the United States were excluded entirely
19 from the public school system and did not go through the educational process with their
20 peers;
21
22 (D) there were many children with disabilities throughout the United States participating in
23 regular school programs whose disabilities prevented such children from having a
24 successful educational experience because their disabilities were undetected; and
25
26 (E) because of the lack of adequate services within the public school system, families were
27 often forced to find services outside the public school system, often at great distance
28 from their residence and at their own expense.
29
- 30 (3) Since the enactment and implementation of the Education for All Handicapped Children Act
31 of 1975, this Act has been successful in ensuring children with disabilities and the families of
32 such children access to a free appropriate public education and in improving educational
33 results for children with disabilities.
34
- 35 (4) However, the implementation of this Act has been impeded by low expectations, and an
36 insufficient focus on applying replicable research on proven methods of teaching and
37 learning for children with disabilities.
38
- 39 (5) Over 20 years of research and experience has demonstrated that the education of children
40 with disabilities can be made more effective by--
41
42 (A) having high expectations for such children and ensuring their access in the general
43 curriculum to the maximum extent possible;
44
45 (B) strengthening the role of parents and ensuring that families of such children have
46 meaningful opportunities to participate in the education of their children at school and at
47 home;
48
49 (C) coordinating this Act with other local, educational service agency, State, and Federal
50 school improvement efforts in order to ensure that such children benefit from such
51 efforts and that special education can become a service for such children rather than a
52 place where they are sent;
53
54 (D) providing appropriate special education and related services and aids and supports in
55 the regular classroom to such children, whenever appropriate;
56
57 (E) supporting high-quality, intensive professional development for all personnel who work
58 with such children in order to ensure that they have the skills and knowledge necessary
59 to enable them--

- 1 (i) to meet developmental goals and, to the maximum extent possible, those
2 challenging expectations that have been established for all children; and
3
4 (ii) to be prepared to lead productive, independent, adult lives, to the maximum
5 extent possible;
6
7 (F) providing incentives for whole-school approaches and pre-referral intervention to
8 reduce the need to label children as disabled in order to address their learning needs;
9 and
10
11 (G) focusing resources on teaching and learning while reducing paperwork and
12 requirements that do not assist in improving educational results.
13
14 (6) While States, local educational agencies, and educational service agencies are responsible
15 for providing an education for all children with disabilities, it is in the national interest that the
16 Federal Government have a role in assisting State and local efforts to educate children with
17 disabilities in order to improve results for such children and to ensure equal protection of the
18 law.
19
20 (7) (A) The Federal Government must be responsive to the growing needs of an increasingly
21 more diverse society. A more equitable allocation of resources is essential for the
22 Federal Government to meet its responsibility to provide an equal educational
23 opportunity for all individuals.
24
25 (B) America's racial profile is rapidly changing. Between 1980 and 1990, the rate of
26 increase in the population for white Americans was 6 percent, while the rate of increase
27 for racial and ethnic minorities was much higher: 53 percent for Hispanics, 13.2 percent
28 for African-Americans, and 107.8 percent for Asians.
29
30 (C) By the year 2000, this Nation will have 275,000,000 people, nearly one of every three
31 of whom will be either African-American, Hispanic, Asian-American, or American Indian.
32
33 (D) Taken together as a group, minority children are comprising an ever larger percentage
34 of public school students. Large-city school populations are overwhelmingly minority,
35 for example: for fall 1993, the figure for Miami was 84 percent; Chicago, 89 percent;
36 Philadelphia, 78 percent; Baltimore, 84 percent; Houston, 88 percent; and Los
37 Angeles, 88 percent.
38
39 (E) Recruitment efforts within special education must focus on bringing larger numbers of
40 minorities into the profession in order to provide appropriate practitioner knowledge,
41 role models, and sufficient manpower to address the clearly changing demography of
42 special education.
43
44 (F) The limited English proficient population is the fastest growing in our Nation, and the
45 growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts,
46 limited English students make up almost half of all students initially entering school at
47 the kindergarten level. Studies have documented apparent discrepancies in the levels
48 of referral and placement of limited English proficient children in special education. The
49 Department of Education has found that services provided to limited English proficient
50 students often do not respond primarily to the pupil's academic needs. These trends
51 pose special challenges for special education in the referral, assessment, and services
52 for our Nation's students from non-English language backgrounds.
53
54 (8) (A) Greater efforts are needed to prevent the intensification of problems connected with
55 mislabeling and high dropout rates among minority children with disabilities.
56
57 (B) More minority children continue to be served in special education than would be
58 expected from the percentage of minority students in the general school population.
59
60 (C) Poor African-American children are 2.3 times more likely to be identified by their teacher
61 as having mental retardation than their white counterpart.

- 1 (D) Although African-Americans represent 16 percent of elementary and secondary
2 enrollments, they constitute 21 percent of total enrollments in special education.
3
4 (E) The drop-out rate is 68 percent higher for minorities than for whites.
5
6 (F) More than 50 percent of minority students in large cities drop out of school.
7
8 (9) (A) The opportunity for full participation in awards for grants and contracts; boards of
9 organizations receiving funds under this Act; and peer review panels; and training of
10 professionals in the area of special education by minority individuals, organizations, and
11 historically black colleges and universities is essential if we are to obtain greater success
12 in the education of minority children with disabilities.
13
14 (B) In 1993, of the 915,000 college and university professors, 4.9 percent were African-
15 American and 2.4 percent were Hispanic. Of the 2,940,000 teachers, prekindergarten
16 through high school, 6.8 percent were African-American and 4.1 percent were
17 Hispanic.
18
19 (C) Students from minority groups comprise more than 50 percent of K-12 public school
20 enrollment in seven States yet minority enrollment in teacher training programs is less
21 than 15 percent in all but six States.
22
23 (D) As the number of African-American and Hispanic students in special education
24 increases, the number of minority teachers and related service personnel produced in
25 our colleges and universities continues to decrease.
26
27 (E) Ten years ago, 12 percent of the United States teaching force in public elementary and
28 secondary schools were members of a minority group. Minorities comprised 21 percent
29 of the national population at that time and were clearly underrepresented then among
30 employed teachers. Today, the elementary and secondary teaching force is 13 percent
31 minority, while one-third of the students in public schools are minority children.
32
33 (F) As recently as 1991, historically black colleges and universities enrolled 44 percent of
34 the African-American teacher trainees in the Nation. However, in 1993, historically black
35 colleges and universities received only 4 percent of the discretionary funds for special
36 education and related services personnel training under this Act.
37
38 (G) While African-American students constitute 28 percent of total enrollment in special
39 education, only 11.2 percent of individuals enrolled in preservice training programs for
40 special education are African-American.
41
42 (H) In 1986-87, of the degrees conferred in education at the B.A., M.A., and Ph.D levels,
43 only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic
44 students.
45
46 (10) Minorities and underserved persons are socially disadvantaged because of the lack of
47 opportunities in training and educational programs, undergirded by the practices in the private
48 sector that impede their full participation in the mainstream of society.
49
50 (d) PURPOSES.--The purposes of this title are--
51
52 (1) (A) to ensure that all children with disabilities have available to them a free appropriate
53 public education that emphasizes special education and related services designed to
54 meet their unique needs and prepare them for employment and independent living;
55
56 (B) to ensure that the rights of children with disabilities and parents of such children are
57 protected; and
58
59 (C) to assist States, localities, educational service agencies, and Federal agencies to
60 provide for the education of all children with disabilities;

- (2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;
- (3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and
- (4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

SEC. 602. DEFINITIONS.

Except as otherwise provided, as used in this Act:

- (1) **ASSISTIVE TECHNOLOGY DEVICE.**--The term `assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.
- (2) **ASSISTIVE TECHNOLOGY SERVICE.**--The term `assistive technology service' means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes--
 - (A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;
 - (B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;
 - (C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
 - (D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
 - (E) training or technical assistance for such child, or, where appropriate, the family of such child; and
 - (F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.
- (3) **CHILD WITH A DISABILITY.**--
 - (A) **IN GENERAL.**--The term `child with a disability' means a child--
 - (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as `emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
 - (ii) who, by reason thereof, needs special education and related services.
 - (B) **CHILD AGED 3 THROUGH 9.**--The term `child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child--

- 1 (i) experiencing developmental delays, as defined by the State and as measured by
2 appropriate diagnostic instruments and procedures, in one or more of the
3 following areas: physical development, cognitive development, communication
4 development, social or emotional development, or adaptive development; and
5
6 (ii) who, by reason thereof, needs special education and related services.
7
8 (4) EDUCATIONAL SERVICE AGENCY.--The term `educational service agency'--
9
10 (A) means a regional public multiservice agency--
11
12 (i) authorized by State law to develop, manage, and provide services or programs to
13 local educational agencies; and
14
15 (ii) recognized as an administrative agency for purposes of the provision of special
16 education and related services provided within public elementary and secondary
17 schools of the State; and
18
19 (B) includes any other public institution or agency having administrative control and
20 direction over a public elementary or secondary school.
21
22 (5) ELEMENTARY SCHOOL.--The term `elementary school' means a nonprofit institutional day
23 or residential school that provides elementary education, as determined under State law.
24
25 (6) EQUIPMENT.--The term `equipment' includes--
26
27 (A) machinery, utilities, and built-in equipment and any necessary enclosures or structures
28 to house such machinery, utilities, or equipment; and
29
30 (B) all other items necessary for the functioning of a particular facility as a facility for the
31 provision of educational services, including items such as instructional equipment and
32 necessary furniture; printed, published, and audio-visual instructional materials;
33 telecommunications, sensory, and other technological aids and devices; and books,
34 periodicals, documents, and other related materials.
35
36 (7) EXCESS COSTS.--The term `excess costs' means those costs that are in excess of the
37 average annual per-student expenditure in a local educational agency during the preceding
38 school year for an elementary or secondary school student, as may be appropriate, and which
39 shall be computed after deducting--
40
41 (A) amounts received--
42
43 (i) under part B of this title;
44
45 (ii) under part A of title I of the Elementary and Secondary Education Act of 1965; or
46
47 (iii) under part A of title VII of that Act; and
48
49 (B) any State or local funds expended for programs that would qualify for assistance under
50 any of those parts.
51
52 (8) FREE APPROPRIATE PUBLIC EDUCATION.--The term `free appropriate public education'
53 means special education and related services that--
54
55 (A) have been provided at public expense, under public supervision and direction, and
56 without charge;
57
58 (B) meet the standards of the State educational agency;
59
60 (C) include an appropriate preschool, elementary, or secondary school education in the
61 State involved; and
62

- (D) are provided in conformity with the individualized education program required under section 614(d).
- (9) INDIAN.--The term 'Indian' means an individual who is a member of an Indian tribe.
- (10) INDIAN TRIBE.--The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).
- (11) INDIVIDUALIZED EDUCATION PROGRAM.--The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).
- (12) INDIVIDUALIZED FAMILY SERVICE PLAN.--The term 'individualized family service plan' has the meaning given such term in section 636.
- (13) INFANT OR TODDLER WITH A DISABILITY.--The term 'infant or toddler with a disability' has the meaning given such term in section 632.
- (14) INSTITUTION OF HIGHER EDUCATION.--The term 'institution of higher education'--
- (A) has the meaning given that term in section 1201(a) of the Higher Education Act of 1965; and
- (B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.
- (15) LOCAL EDUCATIONAL AGENCY.--
- (A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.
- (B) The term includes--
- (i) an educational service agency, as defined in paragraph (4); and
- (ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school.
- (C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.
- (16) NATIVE LANGUAGE.--The term 'native language', when used with reference to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.
- (17) NONPROFIT.--The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

- 1 (18) OUTLYING AREA.--The term 'outlying area' means the United States Virgin Islands, Guam,
2 American Samoa, and the Commonwealth of the Northern Mariana Islands.
- 3
- 4 (19) PARENT.--The term 'parent'--
- 5
- 6 (A) includes a legal guardian; and
- 7
- 8 (B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned
9 under either of those sections to be a surrogate parent.
- 10
- 11 (20) PARENT ORGANIZATION.--The term 'parent organization' has the meaning given that term in
12 section 682(g).
- 13
- 14 (21) PARENT TRAINING AND INFORMATION CENTER.--The term 'parent training and information
15 center' means a center assisted under section 682 or 683.
- 16
- 17 (22) RELATED SERVICES.--The term 'related services' means transportation, and such
18 developmental, corrective, and other supportive services (including speech-language
19 pathology and audiology services, psychological services, physical and occupational therapy,
20 recreation, including therapeutic recreation, social work services, counseling services,
21 including rehabilitation counseling, orientation and mobility services, and medical services,
22 except that such medical services shall be for diagnostic and evaluation purposes only) as
23 may be required to assist a child with a disability to benefit from special education, and
24 includes the early identification and assessment of disabling conditions in children.
- 25
- 26 (23) SECONDARY SCHOOL.--The term 'secondary school' means a nonprofit institutional day or
27 residential school that provides secondary education, as determined under State law, except
28 that it does not include any education beyond grade 12.
- 29
- 30 (24) SECRETARY.--The term 'Secretary' means the Secretary of Education.
- 31
- 32 (25) SPECIAL EDUCATION.--The term 'special education' means specially designed instruction,
33 at no cost to parents, to meet the unique needs of a child with a disability, including--
- 34
- 35 (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in
36 other settings; and
- 37
- 38 (B) instruction in physical education.
- 39
- 40 (26) SPECIFIC LEARNING DISABILITY.--
- 41
- 42 (A) IN GENERAL.--The term 'specific learning disability' means a disorder in one or more of
43 the basic psychological processes involved in understanding or in using language,
44 spoken or written, which disorder may manifest itself in imperfect ability to listen, think,
45 speak, read, write, spell, or do mathematical calculations.
- 46
- 47 (B) DISORDERS INCLUDED.--Such term includes such conditions as perceptual
48 disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- 49
- 50 (C) DISORDERS NOT INCLUDED.--Such term does not include a learning problem that is
51 primarily the result of visual, hearing, or motor disabilities, of mental retardation, of
52 emotional disturbance, or of environmental, cultural, or economic disadvantage.
- 53
- 54 (27) STATE.--The term 'State' means each of the 50 States, the District of Columbia, the
55 Commonwealth of Puerto Rico, and each of the outlying areas.
- 56
- 57 (28) STATE EDUCATIONAL AGENCY.--The term 'State educational agency' means the State
58 board of education or other agency or officer primarily responsible for the State supervision of
59 public elementary and secondary schools, or, if there is no such officer or agency, an officer or
60 agency designated by the Governor or by State law.
- 61

- 1 (29) SUPPLEMENTARY AIDS AND SERVICES.--The term `supplementary aids and services'
2 means, aids, services, and other supports that are provided in regular education classes or
3 other education-related settings to enable children with disabilities to be educated with
4 nondisabled children to the maximum extent appropriate in accordance with section
5 612(a)(5).
6
- 7 (30) TRANSITION SERVICES.--The term `transition services' means a coordinated set of activities
8 for a student with a disability that--
9
- 10 (A) is designed within an outcome-oriented process, which promotes movement from
11 school to post-school activities, including post-secondary education, vocational
12 training, integrated employment (including supported employment), continuing and
13 adult education, adult services, independent living, or community participation;
14
- 15 (B) is based upon the individual student's needs, taking into account the student's
16 preferences and interests; and
17
- 18 (C) includes instruction, related services, community experiences, the development of
19 employment and other post-school adult living objectives, and, when appropriate,
20 acquisition of daily living skills and functional vocational evaluation.
21

22 **SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.**

- 23
- 24 (a) ESTABLISHMENT.--There shall be, within the Office of Special Education and Rehabilitative
25 Services in the Department of Education, an Office of Special Education Programs, which shall be
26 the principal agency in such Department for administering and carrying out this Act and other
27 programs and activities concerning the education of children with disabilities.
28
- 29 (b) DIRECTOR.--The Office established under subsection (a) shall be headed by a Director who shall
30 be selected by the Secretary and shall report directly to the Assistant Secretary for Special
31 Education and Rehabilitative Services.
32
- 33 (c) VOLUNTARY AND UNCOMPENSATED SERVICES.--Notwithstanding section 1342 of title 31,
34 United States Code, the Secretary is authorized to accept voluntary and uncompensated services
35 in furtherance of the purposes of this Act.
36

37 **SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.**

- 38
- 39 (a) IN GENERAL.--A State shall not be immune under the eleventh amendment to the Constitution of
40 the United States from suit in Federal court for a violation of this Act.
41
- 42 (b) REMEDIES.--In a suit against a State for a violation of this Act, remedies (including remedies both at
43 law and in equity) are available for such a violation to the same extent as those remedies are available
44 for such a violation in the suit against any public entity other than a State.
45
- 46 (c) EFFECTIVE DATE.--Subsections (a) and (b) apply with respect to violations that occur in whole or
47 part after the date of the enactment of the Education of the Handicapped Act Amendments of
48 1990.
49

50 **SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF 51 FACILITIES.**

- 52
- 53 (a) IN GENERAL.--If the Secretary determines that a program authorized under this Act would be
54 improved by permitting program funds to be used to acquire appropriate equipment, or to construct
55 new facilities or alter of existing facilities, the Secretary is authorized to allow the use of those funds
56 for those purposes.
57
- 58 (b) COMPLIANCE WITH CERTAIN REGULATIONS.--Any construction of new facilities or alteration of
59 existing facilities under subsection (a) shall comply with the requirements of--
60

- (1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the 'Americans with Disabilities Accessibility Guidelines for Buildings and Facilities'); or
- (2) appendix A of part 101-19.6 of title 41, Code of Federal Regulations (commonly known as the 'Uniform Federal Accessibility Standards').

SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

The Secretary shall ensure that each recipient of assistance under this Act makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

- (a) **PUBLIC COMMENT PERIOD.**--The Secretary shall provide a public comment period of at least 90 days on any regulation proposed under part B or part C of this Act on which an opportunity for public comment is otherwise required by law.
- (b) **PROTECTIONS PROVIDED TO CHILDREN.**--The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that would procedurally or substantively lessen the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.
- (c) **POLICY LETTERS AND STATEMENTS.**--The Secretary may not, through policy letters or other statements, establish a rule that is required for compliance with, and eligibility under, this part without following the requirements of section 553 of title 5, United States Code.
- (d) **CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS PART.**--
 - (1) **IN GENERAL.**--The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.
 - (2) **ADDITIONAL INFORMATION.**--For each item of correspondence published in a list under paragraph (1), the Secretary shall identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate.
- (e) **ISSUES OF NATIONAL SIGNIFICANCE.**--If the Secretary receives a written request regarding a policy, question, or interpretation under part B of this Act, and determines that it raises an issue of general interest or applicability of national significance to the implementation of part B, the Secretary shall--
 - (1) include a statement to that effect in any written response;
 - (2) widely disseminate that response to State educational agencies, local educational agencies, parent and advocacy organizations, and other interested organizations, subject to applicable laws relating to confidentiality of information; and
 - (3) not later than one year after the date on which the Secretary responds to the written request, issue written guidance on such policy, question, or interpretation through such means as the Secretary determines to be appropriate and consistent with law, such as a policy memorandum, notice of interpretation, or notice of proposed rulemaking.

1 (f) EXPLANATION.--Any written response by the Secretary under subsection (e) regarding a policy,
2 question, or interpretation under part B of this Act shall include an explanation that the written
3 response--

4 (1) is provided as informal guidance and is not legally binding; and

5
6 (2) represents the interpretation by the Department of Education of the applicable statutory or
7 regulatory requirements in the context of the specific facts presented.
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9

10 **PART B--ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES**

11 **SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF** 12 **APPROPRIATIONS.** 13 14

15 (a) GRANTS TO STATES-

16 (1) PURPOSE OF GRANTS- The Secretary shall make grants to States and the outlying areas,
17 and provide funds to the Secretary of the Interior, to assist them to provide special education
18 and related services to children with disabilities in accordance with this part.
19
20

21 (2) MAXIMUM AMOUNTS- The maximum amount of the grant a State may receive under this
22 section for any fiscal year is--
23

24 (A) the number of children with disabilities in the State who are receiving special education
25 and related services--
26

27 (i) aged three through five if the State is eligible for a grant under section 619; and

28 (ii) aged six through 21; multiplied by

29 (B) 40 percent of the average per-pupil expenditure in public elementary and secondary
30 schools in the United States.
31
32
33

34 (b) OUTLYING AREAS AND FREELY ASSOCIATED STATES-

35 (1) FUNDS RESERVED- From the amount appropriated for any fiscal year under subsection (j),
36 the Secretary shall reserve not more than one percent, which shall be used--
37
38

39 (A) to provide assistance to the outlying areas in accordance with their respective
40 populations of individuals aged three through 21; and
41

42 (B) for fiscal years 1998 through 2001, to carry out the competition described in paragraph
43 (2), except that the amount reserved to carry out that competition shall not exceed the
44 amount reserved for fiscal year 1996 for the competition under part B of this Act
45 described under the heading 'SPECIAL EDUCATION' in Public Law 104-134.
46

47 (2) LIMITATION FOR FREELY ASSOCIATED STATES-

48 (A) COMPETITIVE GRANTS- The Secretary shall use funds described in paragraph (1)(B)
49 to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth
50 of the Northern Mariana Islands, and the freely associated States to carry out the
51 purposes of this part.
52
53

54 (B) AWARD BASIS- The Secretary shall award grants under subparagraph (A) on a
55 competitive basis, pursuant to the recommendations of the Pacific Region Educational
56 Laboratory in Honolulu, Hawaii. Those recommendations shall be made by experts in
57 the field of special education and related services.
58

59 (C) ASSISTANCE REQUIREMENTS- Any freely associated State that wishes to receive
60 funds under this part shall include, in its application for assistance--
61
62

- 1 (i) information demonstrating that it will meet all conditions that apply to States under
2 this part;
3
4 (ii) an assurance that, notwithstanding any other provision of this part, it will use
5 those funds only for the direct provision of special education and related services
6 to children with disabilities and to enhance its capacity to make a free appropriate
7 public education available to all children with disabilities;
8
9 (iii) the identity of the source and amount of funds, in addition to funds under this
10 part, that it will make available to ensure that a free appropriate public education is
11 available to all children with disabilities within its jurisdiction; and
12
13 (iv) such other information and assurances as the Secretary may require.
14
15 (D) TERMINATION OF ELIGIBILITY- Notwithstanding any other provision of law, the freely
16 associated States shall not receive any funds under this part for any program year that
17 begins after September 30, 2001.
18
19 (E) ADMINISTRATIVE COSTS- The Secretary may provide not more than five percent of
20 the amount reserved for grants under this paragraph to pay the administrative costs of
21 the Pacific Region Educational Laboratory under subparagraph (B).
22
23 (3) LIMITATION- An outlying area is not eligible for a competitive award under paragraph (2)
24 unless it receives assistance under paragraph (1)(A).
25
26 (4) SPECIAL RULE- The provisions of Public Law 95-134, permitting the consolidation of grants
27 by the outlying areas, shall not apply to funds provided to those areas or to the freely
28 associated States under this section.
29
30 (5) ELIGIBILITY FOR DISCRETIONARY PROGRAMS- The freely associated States shall be
31 eligible to receive assistance under subpart 2 of part D of this Act until September 30, 2001.
32
33 (6) DEFINITION- As used in this subsection, the term freely associated States' means the
34 Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of
35 Palau.
36
37 (c) SECRETARY OF THE INTERIOR- From the amount appropriated for any fiscal year under
38 subsection (j), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of
39 the Interior in accordance with subsection (i).
40
41 (d) ALLOCATIONS TO STATES-
42
43 (1) IN GENERAL- After reserving funds for studies and evaluations under section 674(e), and for
44 payments to the outlying areas and the Secretary of the Interior under subsections (b) and (c),
45 the Secretary shall allocate the remaining amount among the States in accordance with
46 paragraph (2) or subsection (e), as the case may be.
47
48 (2) INTERIM FORMULA- Except as provided in subsection (e), the Secretary shall allocate the
49 amount described in paragraph (1) among the States in accordance with section 611(a) and
50 (b) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education
51 Act Amendments of 1997, except that the determination of the number of children with
52 disabilities receiving special education and related services under such section 611(a) may, at
53 the State's discretion, be calculated as of the last Friday in October or as of December 1 of the
54 fiscal year for which the funds are appropriated.
55
56 (e) PERMANENT FORMULA-
57
58 (1) ESTABLISHMENT OF BASE YEAR- The Secretary shall allocate the amount described in
59 subsection (d)(1) among the States in accordance with this subsection for each fiscal year
60 beginning with the first fiscal year for which the amount appropriated under subsection (j) is
61 more than \$4,924,672,200.

1 (2) USE OF BASE YEAR-

2
3 (A) DEFINITION- As used in this subsection, the term base year' means the fiscal year
4 preceding the first fiscal year in which this subsection applies.
5

6 (B) SPECIAL RULE FOR USE OF BASE YEAR AMOUNT- If a State received any funds
7 under this section for the base year on the basis of children aged three through five,
8 but does not make a free appropriate public education available to all children with
9 disabilities aged three through five in the State in any subsequent fiscal year, the
10 Secretary shall compute the State's base year amount, solely for the purpose of
11 calculating the State's allocation in that subsequent year under paragraph (3) or (4), by
12 subtracting the amount allocated to the State for the base year on the basis of those
13 children.
14

15 (3) INCREASE IN FUNDS- If the amount available for allocations to States under paragraph (1) is
16 equal to or greater than the amount allocated to the States under this paragraph for the
17 preceding fiscal year, those allocations shall be calculated as follows:
18

19 (A) (i) Except as provided in subparagraph (B), the Secretary shall--
20

21 (I) allocate to each State the amount it received for the base year;
22

23 (II) allocate 85 percent of any remaining funds to States on the basis of their
24 relative populations of children aged 3 through 21 who are of the same age
25 as children with disabilities for whom the State ensures the availability of a
26 free appropriate public education under this part; and
27

28 (III) allocate 15 percent of those remaining funds to States on the basis of their
29 relative populations of children described in subclause (II) who are living in
30 poverty.
31

32 (ii) For the purpose of making grants under this paragraph, the Secretary shall use
33 the most recent population data, including data on children living in poverty, that
34 are available and satisfactory to the Secretary.
35

36 (B) Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to
37 the following:
38

39 (i) No State's allocation shall be less than its allocation for the preceding fiscal year.
40

41 (ii) No State's allocation shall be less than the greatest of--
42

43 (I) the sum of--
44

45 (aa) the amount it received for the base year; and
46

47 (bb) one third of one percent of the amount by which the amount
48 appropriated under subsection (j) exceeds the amount appropriated
49 under this section for the base year;
50

51 (II) the sum of--
52

53 (aa) the amount it received for the preceding fiscal year; and
54

55 (bb) that amount multiplied by the percentage by which the increase in
56 the funds appropriated from the preceding fiscal year exceeds 1.5
57 percent; or
58

59 (III) the sum of--
60

61 (aa) the amount it received for the preceding fiscal year; and
62

- 1 (bb) that amount multiplied by 90 percent of the percentage increase in
2 the amount appropriated from the preceding fiscal year.
- 3
- 4 (iii) Notwithstanding clause (ii), no State's allocation under this paragraph shall
5 exceed the sum of--
- 6
- 7 (I) the amount it received for the preceding fiscal year; and
- 8
- 9 (II) that amount multiplied by the sum of 1.5 percent and the percentage
10 increase in the amount appropriated.
- 11
- 12 (C) If the amount available for allocations under this paragraph is insufficient to pay those
13 allocations in full, those allocations shall be ratably reduced, subject to subparagraph
14 (B)(i).
- 15
- 16 (4) DECREASE IN FUNDS- If the amount available for allocations to States under paragraph (1) is
17 less than the amount allocated to the States under this section for the preceding fiscal year,
18 those allocations shall be calculated as follows:
- 19
- 20 (A) If the amount available for allocations is greater than the amount allocated to the States
21 for the base year, each State shall be allocated the sum of--
- 22
- 23 (i) the amount it received for the base year; and
- 24
- 25 (ii) an amount that bears the same relation to any remaining funds as the increase the
26 State received for the preceding fiscal year over the base year bears to the total of
27 all such increases for all States.
- 28
- 29 (B) (i) If the amount available for allocations is equal to or less than the amount allocated
30 to the States for the base year, each State shall be allocated the amount it
31 received for the base year.
- 32
- 33 (ii) If the amount available is insufficient to make the allocations described in clause
34 (i), those allocations shall be ratably reduced.
- 35
- 36 (f) STATE-LEVEL ACTIVITIES-
- 37
- 38 (1) GENERAL-
- 39
- 40 (A) Each State may retain not more than the amount described in subparagraph (B) for
41 administration and other State-level activities in accordance with paragraphs (2) and (3).
- 42
- 43
- 44 (B) For each fiscal year, the Secretary shall determine and report to the State educational
45 agency an amount that is 25 percent of the amount the State received under this
46 section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding
47 fiscal year by the lesser of--
- 48
- 49 (i) the percentage increase, if any, from the preceding fiscal year in the State's
50 allocation under this section; or
- 51
- 52 (ii) the rate of inflation, as measured by the percentage increase, if any, from the
53 preceding fiscal year in the Consumer Price Index For All Urban Consumers,
54 published by the Bureau of Labor Statistics of the Department of Labor.
- 55
- 56 (C) A State may use funds it retains under subparagraph (A) without regard to--
- 57
- 58 (i) the prohibition on commingling of funds in section 612(a)(18)(B); and
- 59
- 60 (ii) the prohibition on supplanting other funds in section 612(a)(18)(C).
- 61

1 (2) STATE ADMINISTRATION--
2

3 (A) For the purpose of administering this part, including section 619 (including the
4 coordination of activities under this part with, and providing technical assistance to,
5 other programs that provide services to children with disabilities)--
6

7 (i) each State may use not more than twenty percent of the maximum amount it may
8 retain under paragraph (1)(A) for any fiscal year or \$500,000 (adjusted by the
9 cumulative rate of inflation since fiscal year 1998, as measured by the percentage
10 increase, if any, in the Consumer Price Index For All Urban Consumers, published
11 by the Bureau of Labor Statistics of the Department of Labor), whichever is
12 greater; and
13

14 (ii) each outlying area may use up to five percent of the amount it receives under this
15 section for any fiscal year or \$35,000, whichever is greater.
16

17 (B) Funds described in subparagraph (A) may also be used for the administration of part C
18 of this Act, if the State educational agency is the lead agency for the State under that
19 part.
20

21 (3) OTHER STATE-LEVEL ACTIVITIES- Each State shall use any funds it retains under
22 paragraph (1) and does not use for administration under paragraph (2) for any of the following:
23

24 (A) Support and direct services, including technical assistance and personnel
25 development and training.
26

27 (B) Administrative costs of monitoring and complaint investigation, but only to the extent
28 that those costs exceed the costs incurred for those activities during fiscal year 1985.
29

30 (C) To establish and implement the mediation process required by section 615(e),
31 including providing for the costs of mediators and support personnel.
32

33 (D) To assist local educational agencies in meeting personnel shortages.
34

35 (E) To develop a State Improvement Plan under subpart 1 of part D.
36

37 (F) Activities at the State and local levels to meet the performance goals established by the
38 State under section 612(a)(16) and to support implementation of the State
39 Improvement Plan under subpart 1 of part D if the State receives funds under that
40 subpart.
41

42 (G) To supplement other amounts used to develop and implement a Statewide
43 coordinated services system designed to improve results for children and families,
44 including children with disabilities and their families, but not to exceed one percent of
45 the amount received by the State under this section. This system shall be coordinated
46 with and, to the extent appropriate, build on the system of coordinated services
47 developed by the State under part C of this Act.
48

49 (H) For subgrants to local educational agencies for the purposes described in paragraph
50 (4)(A).
51

52 (4) (A) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES FOR CAPACITY-BUILDING AND
53 IMPROVEMENT- In any fiscal year in which the percentage increase in the State's
54 allocation under this section exceeds the rate of inflation (as measured by the
55 percentage increase, if any, from the preceding fiscal year in the Consumer Price Index
56 For All Urban Consumers, published by the Bureau of Labor Statistics of the
57 Department of Labor), each State shall reserve, from its allocation under this section,
58 the amount described in subparagraph (B) to make subgrants to local educational
59 agencies, unless that amount is less than \$100,000, to assist them in providing direct
60 services and in making systemic change to improve results for children with disabilities
61 through one or more of the following:
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- (i) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.
 - (ii) Addressing needs or carrying out improvement strategies identified in the State's Improvement Plan under subpart 1 of part D.
 - (iii) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.
 - (iv) Establishing, expanding, or implementing interagency agreements and arrangements between local educational agencies and other agencies or organizations concerning the provision of services to children with disabilities and their families.
 - (v) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.
- (B) MAXIMUM SUBGRANT- For each fiscal year, the amount referred to in subparagraph (A) is--
- (i) the maximum amount the State was allowed to retain under paragraph (1)(A) for the prior fiscal year, or for fiscal year 1998, 25 percent of the State's allocation for fiscal year 1997 under this section; multiplied by
 - (ii) the difference between the percentage increase in the State's allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.
- (5) REPORT ON USE OF FUNDS- As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe--
- (A) how amounts retained under paragraph (1) will be used to meet the requirements of this part;
 - (B) how those amounts will be allocated among the activities described in paragraphs (2) and (3) to meet State priorities based on input from local educational agencies; and
 - (C) the percentage of those amounts, if any, that will be distributed to local educational agencies by formula.
- (g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES-
- (1) SUBGRANTS REQUIRED- Each State that receives a grant under this section for any fiscal year shall distribute any funds it does not retain under subsection (f) (at least 75 percent of the grant funds) to local educational agencies in the State that have established their eligibility under section 613, and to State agencies that received funds under section 614A(a) of this Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613, for use in accordance with this part.
 - (2) ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES-
 - (A) INTERIM PROCEDURE- For each fiscal year for which funds are allocated to States under subsection (d)(2), each State shall allocate funds under paragraph (1) in accordance with section 611(d) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997.

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- (B) PERMANENT PROCEDURE- For each fiscal year for which funds are allocated to States under subsection (e), each State shall allocate funds under paragraph (1) as follows:
- (i) BASE PAYMENTS- The State shall first award each agency described in paragraph (1) the amount that agency would have received under this section for the base year, as defined in subsection (e)(2)(A), if the State had distributed 75 percent of its grant for that year under section 611(d), as then in effect.
- (ii) ALLOCATION OF REMAINING FUNDS- After making allocations under clause (i), the State shall--
- (I) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and
- (II) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.
- (3) FORMER CHAPTER 1 STATE AGENCIES-
- (A) To the extent necessary, the State--
- (i) shall use funds that are available under subsection (f)(1)(A) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 receives, from the combination of funds under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount equal to--
- (I) the number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, subject to the limitation in subparagraph (B); multiplied by
- (II) the per-child amount provided under such subpart for fiscal year 1994; and
- (ii) may use those funds to ensure that each local educational agency that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount for each such child, aged 3 through 21 to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.
- (B) The number of children counted under subparagraph (A)(i)(I) shall not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.
- (4) REALLOCATION OF FUNDS- If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

1 (h) DEFINITIONS- For the purpose of this section--
2

3 (1) the term average per-pupil expenditure in public elementary and secondary schools in the
4 'United States' means--
5

6 (A) without regard to the source of funds--
7

8 (i) the aggregate current expenditures, during the second fiscal year preceding the
9 fiscal year for which the determination is made (or, if satisfactory data for that year
10 are not available, during the most recent preceding fiscal year for which
11 satisfactory data are available) of all local educational agencies in the 50 States
12 and the District of Columbia); plus
13

14 (ii) any direct expenditures by the State for the operation of those agencies; divided
15 by
16

17 (B) the aggregate number of children in average daily attendance to whom those agencies
18 provided free public education during that preceding year; and
19

20 (2) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth
21 of Puerto Rico.
22

23 (i) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR-
24

25 (1) PROVISION OF AMOUNTS FOR ASSISTANCE-
26

27 (A) IN GENERAL- The Secretary of Education shall provide amounts to the Secretary of the
28 Interior to meet the need for assistance for the education of children with disabilities on
29 reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for
30 Indian children operated or funded by the Secretary of the Interior. The amount of such
31 payment for any fiscal year shall be equal to 80 percent of the amount allotted under
32 subsection (c) for that fiscal year.
33

34 (B) CALCULATION OF NUMBER OF CHILDREN- In the case of Indian students aged 3 to
35 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs
36 (hereafter in this subsection referred to as BIA') schools and that are required by the
37 States in which such schools are located to attain or maintain State accreditation, and
38 which schools have such accreditation prior to the date of enactment of the Individuals
39 with Disabilities Education Act Amendments of 1991, the school shall be allowed to
40 count those children for the purpose of distribution of the funds provided under this
41 paragraph to the Secretary of the Interior. The Secretary of the Interior shall be
42 responsible for meeting all of the requirements of this part for these children, in
43 accordance with paragraph (2).
44

45 (C) ADDITIONAL REQUIREMENT- With respect to all other children aged 3 to 21, inclusive,
46 on reservations, the State educational agency shall be responsible for ensuring that all
47 of the requirements of this part are implemented.
48

49 (2) SUBMISSION OF INFORMATION- The Secretary of Education may provide the Secretary of
50 the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior
51 submits to the Secretary of Education information that--
52

53 (A) demonstrates that the Department of the Interior meets the appropriate requirements,
54 as determined by the Secretary of Education, of sections 612 (including monitoring and
55 evaluation activities) and 613;
56

57 (B) includes a description of how the Secretary of the Interior will coordinate the provision
58 of services under this part with local educational agencies, tribes and tribal
59 organizations, and other private and Federal service providers;
60

- 1 (C) includes an assurance that there are public hearings, adequate notice of such hearings,
2 and an opportunity for comment afforded to members of tribes, tribal governing bodies,
3 and affected local school boards before the adoption of the policies, programs, and
4 procedures described in subparagraph (A);
5
6 (D) includes an assurance that the Secretary of the Interior will provide such information as
7 the Secretary of Education may require to comply with section 618;
8
9 (E) includes an assurance that the Secretary of the Interior and the Secretary of Health and
10 Human Services have entered into a memorandum of agreement, to be provided to the
11 Secretary of Education, for the coordination of services, resources, and personnel
12 between their respective Federal, State, and local offices and with State and local
13 educational agencies and other entities to facilitate the provision of services to Indian
14 children with disabilities residing on or near reservations (such agreement shall provide
15 for the apportionment of responsibilities and costs including, but not limited to, child
16 find, evaluation, diagnosis, remediation or therapeutic measures, and (where
17 appropriate) equipment and medical or personal supplies as needed for a child to
18 remain in school or a program); and
19
20 (F) includes an assurance that the Department of the Interior will cooperate with the
21 Department of Education in its exercise of monitoring and oversight of this application,
22 and any agreements entered into between the Secretary of the Interior and other
23 entities under this part, and will fulfill its duties under this part.
24

25 Section 616(a) shall apply to the information described in this paragraph.
26

27 (3) PAYMENTS FOR EDUCATION AND SERVICES FOR INDIAN CHILDREN WITH DISABILITIES
28 AGED 3 THROUGH 5-
29

- 30 (A) IN GENERAL- With funds appropriated under subsection (j), the Secretary of Education
31 shall make payments to the Secretary of the Interior to be distributed to tribes or tribal
32 organizations (as defined under section 4 of the Indian Self-Determination and
33 Education Assistance Act) or consortia of the above to provide for the coordination of
34 assistance for special education and related services for children with disabilities aged 3
35 through 5 on reservations served by elementary and secondary schools for Indian
36 children operated or funded by the Department of the Interior. The amount of such
37 payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the
38 amount allotted under subsection (c).
39
40 (B) DISTRIBUTION OF FUNDS- The Secretary of the Interior shall distribute the total
41 amount of the payment under subparagraph (A) by allocating to each tribe or tribal
42 organization an amount based on the number of children with disabilities ages 3
43 through 5 residing on reservations as reported annually, divided by the total of those
44 children served by all tribes or tribal organizations.
45
46 (C) SUBMISSION OF INFORMATION- To receive a payment under this paragraph, the tribe
47 or tribal organization shall submit such figures to the Secretary of the Interior as required
48 to determine the amounts to be allocated under subparagraph (B). This information
49 shall be compiled and submitted to the Secretary of Education.
50
51 (D) USE OF FUNDS- The funds received by a tribe or tribal organization shall be used to
52 assist in child find, screening, and other procedures for the early identification of
53 children aged 3 through 5, parent training, and the provision of direct services. These
54 activities may be carried out directly or through contracts or cooperative agreements
55 with the BIA, local educational agencies, and other public or private nonprofit
56 organizations. The tribe or tribal organization is encouraged to involve Indian parents in
57 the development and implementation of these activities. The above entities shall, as
58 appropriate, make referrals to local, State, or Federal entities for the provision of
59 services or further diagnosis.
60

- 1 (E) BIENNIAL REPORT- To be eligible to receive a grant pursuant to subparagraph (A), the
2 tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of
3 activities undertaken under this paragraph, including the number of contracts and
4 cooperative agreements entered into, the number of children contacted and receiving
5 services for each year, and the estimated number of children needing services during
6 the 2 years following the one in which the report is made. The Secretary of the Interior
7 shall include a summary of this information on a biennial basis in the report to the
8 Secretary of Education required under this subsection. The Secretary of Education
9 may require any additional information from the Secretary of the Interior.
- 10
11 (F) PROHIBITIONS- None of the funds allocated under this paragraph may be used by the
12 Secretary of the Interior for administrative purposes, including child count and the
13 provision of technical assistance.
- 14
15 (4) PLAN FOR COORDINATION OF SERVICES- The Secretary of the Interior shall develop and
16 implement a plan for the coordination of services for all Indian children with disabilities residing
17 on reservations covered under this Act. Such plan shall provide for the coordination of
18 services benefiting these children from whatever source, including tribes, the Indian Health
19 Service, other BIA divisions, and other Federal agencies. In developing the plan, the
20 Secretary of the Interior shall consult with all interested and involved parties. It shall be based
21 on the needs of the children and the system best suited for meeting those needs, and may
22 involve the establishment of cooperative agreements between the BIA, other Federal
23 agencies, and other entities. The plan shall also be distributed upon request to States, State
24 and local educational agencies, and other agencies providing services to infants, toddlers,
25 and children with disabilities, to tribes, and to other interested parties.
- 26
27 (5) ESTABLISHMENT OF ADVISORY BOARD- To meet the requirements of section 612(a)(21),
28 the Secretary of the Interior shall establish, not later than 6 months after the date of the
29 enactment of the Individuals with Disabilities Education Act Amendments of 1997, under the
30 BIA, an advisory board composed of individuals involved in or concerned with the education
31 and provision of services to Indian infants, toddlers, children, and youth with disabilities,
32 including Indians with disabilities, Indian parents or guardians of such children, teachers,
33 service providers, State and local educational officials, representatives of tribes or tribal
34 organizations, representatives from State Interagency Coordinating Councils under section
35 641 in States having reservations, and other members representing the various divisions and
36 entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The
37 advisory board shall--
- 38
39 (A) assist in the coordination of services within the BIA and with other local, State, and
40 Federal agencies in the provision of education for infants, toddlers, and children with
41 disabilities;
- 42
43 (B) advise and assist the Secretary of the Interior in the performance of the Secretary's
44 responsibilities described in this subsection;
- 45
46 (C) develop and recommend policies concerning effective inter- and intra-agency
47 collaboration, including modifications to regulations, and the elimination of barriers to
48 inter- and intra-agency programs and activities;
- 49
50 (D) provide assistance and disseminate information on best practices, effective program
51 coordination strategies, and recommendations for improved educational programming
52 for Indian infants, toddlers, and children with disabilities; and
- 53
54 (E) provide assistance in the preparation of information required under paragraph (2)(D).
- 55
56 (6) ANNUAL REPORTS-
- 57
58 (A) IN GENERAL- The advisory board established under paragraph (5) shall prepare and
59 submit to the Secretary of the Interior and to the Congress an annual report containing a
60 description of the activities of the advisory board for the preceding year.
- 61

(B) AVAILABILITY- The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

- (j) AUTHORIZATION OF APPROPRIATIONS- For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated such sums as may be necessary.

SEC. 612. STATE ELIGIBILITY.

- (a) IN GENERAL.--A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

(1) FREE APPROPRIATE PUBLIC EDUCATION.--

(A) IN GENERAL.--A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) LIMITATION -- The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children:

(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges and

(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility:

(I) were not actually identified as being a child with a disability under section 602(3) of this Act; or,

(II) who do not have an Individualized Education Program under this part.

- (2) FULL EDUCATIONAL OPPORTUNITY GOAL.--The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

(3) CHILD FIND.--

(A) IN GENERAL.--All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and that a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

(B) CONSTRUCTION.--Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

- (4) INDIVIDUALIZED EDUCATION PROGRAM.--An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

(5) LEAST RESTRICTIVE ENVIRONMENT.--

- 1 (A) IN GENERAL.--To the maximum extent appropriate, children with disabilities, including
2 children in public or private institutions or other care facilities, are educated with children
3 who are not disabled, and special classes, separate schooling, or other removal of
4 children with disabilities from the regular educational environment occurs only when the
5 nature or severity of the disability of a child is such that education in regular classes with
6 the use of supplementary aids and services cannot be achieved satisfactorily.
7
8 (B) ADDITIONAL REQUIREMENT.--
9
10 (i) IN GENERAL.--If the State uses a funding mechanism by which the State
11 distributes State funds on the basis of the type of setting in which a child is
12 served, the funding mechanism does not result in placements that violate the
13 requirements of subparagraph (A).
14
15 (ii) ASSURANCE.--If the State does not have policies and procedures to ensure
16 compliance with clause (i), the State shall provide the Secretary an assurance that
17 it will revise the funding mechanism as soon as feasible to ensure that such
18 mechanism does not result in such placements.
19
20 (6) PROCEDURAL SAFEGUARDS.--
21
22 (A) IN GENERAL.--Children with disabilities and their parents are afforded the procedural
23 safeguards required by section 615.
24
25 (B) ADDITIONAL PROCEDURAL SAFEGUARDS.--Procedures to ensure that testing and
26 evaluation materials and procedures utilized for the purposes of evaluation and
27 placement of children with disabilities will be selected and administered so as not to be
28 racially or culturally discriminatory. Such materials or procedures shall be provided and
29 administered in the child's native language or mode of communication, unless it clearly
30 is not feasible to do so, and no single procedure shall be the sole criterion for
31 determining an appropriate educational program for a child.
32
33 (7) EVALUATION.--Children with disabilities are evaluated in accordance with subsections (a)
34 through (c) of section 614.
35
36 (8) CONFIDENTIALITY.--Agencies in the State comply with section 617(c) (relating to the
37 confidentiality of records and information).
38
39 (9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.--Children participating in early-
40 intervention programs assisted under part C, and who will participate in preschool programs
41 assisted under this part, experience a smooth and effective transition to those preschool
42 programs in a manner consistent with section 637(a)(8). By the third birthday of such a child,
43 an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an
44 individualized family service plan, has been developed and is being implemented for the
45 child. The local educational agency will participate in transition planning conferences arranged
46 by the designated lead agency under section 637(a)(8).
47
48 (10) CHILDREN IN PRIVATE SCHOOLS.--
49
50 (A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.--
51
52 (i) IN GENERAL.--To the extent consistent with the number and location of children
53 with disabilities in the State who are enrolled by their parents in private elementary
54 and secondary schools, provision is made for the participation of those children in
55 the program assisted or carried out under this part by providing for such children
56 special education and related services in accordance with the following
57 requirements, unless the Secretary has arranged for services to those children
58 under subsection (f):
59
60

- 1 (I) Amounts expended for the provision of those services by a local
2 educational agency shall be equal to a proportionate amount of Federal
3 funds made available under this part.
4
5 (II) Such services may be provided to children with disabilities on the premises
6 of private, including parochial, schools, to the extent consistent with law.
7
8 (ii) CHILD-FIND REQUIREMENT.--The requirements of paragraph (3) of this
9 subsection (relating to child find) shall apply with respect to children with
10 disabilities in the State who are enrolled in private, including parochial, elementary
11 and secondary schools.
12
13 (B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC
14 AGENCIES.--
15
16 (i) IN GENERAL.--Children with disabilities in private schools and facilities are
17 provided special education and related services, in accordance with an
18 individualized education program, at no cost to their parents, if such children are
19 placed in, or referred to, such schools or facilities by the State or appropriate local
20 educational agency as the means of carrying out the requirements of this part or
21 any other applicable law requiring the provision of special education and related
22 services to all children with disabilities within such State.
23
24 (ii) STANDARDS.--In all cases described in clause (i), the State educational agency
25 shall determine whether such schools and facilities meet standards that apply to
26 State and local educational agencies and that children so served have all the
27 rights they would have if served by such agencies.
28
29 (C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS
30 WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.--
31
32 (i) IN GENERAL.--Subject to subparagraph (A), this part does not require a local
33 educational agency to pay for the cost of education, including special education
34 and related services, of a child with a disability at a private school or facility if that
35 agency made a free appropriate public education available to the child and the
36 parents elected to place the child in such private school or facility.
37
38 (ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.--If the parents of a
39 child with a disability, who previously received special education and related
40 services under the authority of a public agency, enroll the child in a private
41 elementary or secondary school without the consent of or referral by the public
42 agency, a court or a hearing officer may require the agency to reimburse the
43 parents for the cost of that enrollment if the court or hearing officer finds that the
44 agency had not made a free appropriate public education available to the child in a
45 timely manner prior to that enrollment.
46
47 (iii) LIMITATION ON REIMBURSEMENT.--The cost of reimbursement described in
48 clause (ii) may be reduced or denied--
49
50 (I) if--
51
52 (aa) at the most recent IEP meeting that the parents attended prior to
53 removal of the child from the public school, the parents did not inform
54 the IEP team that they were rejecting the placement proposed by the
55 public agency to provide a free appropriate public education to their
56 child, including stating their concerns and their intent to enroll their
57 child in a private school at public expense; or
58
59 (bb) 10 business days (including any holidays that occur on a business
60 day) prior to the removal of the child from the public school, the
61 parents did not give written notice to the public agency of the
62 information described in division (aa);

- 1 (II) if, prior to the parents' removal of the child from the public school, the public
2 agency informed the parents, through the notice requirements described
3 in section 615(b)(7), of its intent to evaluate the child (including a statement
4 of the purpose of the evaluation that was appropriate and reasonable), but
5 the parents did not make the child available for such evaluation; or
6
7 (III) upon a judicial finding of unreasonableness with respect to actions taken
8 by the parents.
9
10 (iv) EXCEPTION.--Notwithstanding the notice requirement in clause (iii)(I), the cost of
11 reimbursement may not be reduced or denied for failure to provide such notice if--
12 --
13
14 (I) the parent is illiterate and cannot write in English;
15
16 (II) compliance with clause (iii)(I) would likely result in physical or serious
17 emotional harm to the child;
18
19 (III) the school prevented the parent from providing such notice; or
20
21 (IV) the parents had not received notice, pursuant to section 615, of the notice
22 requirement in clause (iii)(I).
23

24 (11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.--

- 25 (A) IN GENERAL.--The State educational agency is responsible for ensuring that--
26
27 (i) the requirements of this part are met; and
28
29 (ii) all educational programs for children with disabilities in the State, including all
30 such programs administered by any other State or local agency--
31
32 (I) are under the general supervision of individuals in the State who are
33 responsible for educational programs for children with disabilities; and
34
35 (II) meet the educational standards of the State educational agency.
36
37 (B) LIMITATION.--Subparagraph (A) shall not limit the responsibility of agencies in the State
38 other than the State educational agency to provide, or pay for some or all of the costs
39 of, a free appropriate public education for any child with a disability in the State.
40
41 (C) EXCEPTION.--Notwithstanding subparagraphs (A) and (B), the Governor (or another
42 individual pursuant to State law), consistent with State law, may assign to any public
43 agency in the State the responsibility of ensuring that the requirements of this part are
44 met with respect to children with disabilities who are convicted as adults under State law
45 and incarcerated in adult prisons.
46
47

48 (12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.--

- 49 (A) ESTABLISHING RESPONSIBILITY FOR SERVICES.--The Chief Executive Officer or
50 designee of the officer shall ensure that an interagency agreement or other mechanism
51 for interagency coordination is in effect between each public agency described in
52 subparagraph (B) and the State educational agency, in order to ensure that all services
53 described in subparagraph (B)(i) that are needed to ensure a free appropriate public
54 education are provided, including the provision of such services during the pendency
55 of any dispute under clause (iii). Such agreement or mechanism shall include the
56 following:
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59
- (i) AGENCY FINANCIAL RESPONSIBILITY.--An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).
 - (ii) CONDITIONS AND TERMS OF REIMBURSEMENT.--The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.
 - (iii) INTERAGENCY DISPUTES.--Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.
 - (iv) COORDINATION OF SERVICES PROCEDURES.--Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).
- (B) OBLIGATION OF PUBLIC AGENCY.--
- (i) IN GENERAL.--If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(22) relating to related services, 602(29) related to supplementary aids and services, and 602(30) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.
 - (ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.--If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).
- (C) SPECIAL RULE.--The requirements of subparagraph (A) may be met through--
- (i) State statute or regulation;
 - (ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
 - (iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer.

- 1 (13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY
2 ELIGIBILITY.--The State educational agency will not make a final determination that a local
3 educational agency is not eligible for assistance under this part without first affording that
4 agency reasonable notice and an opportunity for a hearing.
5
- 6 (14) COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT.--The State has in effect,
7 consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system
8 of personnel development that is designed to ensure an adequate supply of qualified special
9 education, regular education, and related services personnel that meets the requirements for
10 a State improvement plan relating to personnel development in subsections (b)(2)(B) and
11 (c)(3)(D) of section 653.
12
- 13 (15) PERSONNEL STANDARDS.--
14
- 15 (A) IN GENERAL.--The State educational agency has established and maintains standards
16 to ensure that personnel necessary to carry out this part are appropriately and
17 adequately prepared and trained.
18
- 19 (B) STANDARDS DESCRIBED.--Such standards shall--
20
- 21 (i) be consistent with any State-approved or State-recognized certification,
22 licensing, registration, or other comparable requirements that apply to the
23 professional discipline in which those personnel are providing special education
24 or related services;
25
- 26 (ii) to the extent the standards described in subparagraph (A) are not based on the
27 highest requirements in the State applicable to a specific profession or discipline,
28 the State is taking steps to require retraining or hiring of personnel that meet
29 appropriate professional requirements in the State; and
30
- 31 (iii) allow paraprofessionals and assistants who are appropriately trained and
32 supervised, in accordance with State law, regulations, or written policy, in meeting
33 the requirements of this part to be used to assist in the provision of special
34 education and related services to children with disabilities under this part.
35
- 36 (C) POLICY.--In implementing this paragraph, a State may adopt a policy that includes a
37 requirement that local educational agencies in the State make an ongoing good-faith
38 effort to recruit and hire appropriately and adequately trained personnel to provide
39 special education and related services to children with disabilities, including, in a
40 geographic area of the State where there is a shortage of such personnel, the most
41 qualified individuals available who are making satisfactory progress toward completing
42 applicable course work necessary to meet the standards described in subparagraph
43 (B)(i), consistent with State law, and the steps described in subparagraph (B)(ii) within
44 three years.
45
- 46 (16) PERFORMANCE GOALS AND INDICATORS.--The State--
47
- 48 (A) has established goals for the performance of children with disabilities in the State that--
49
- 50 (i) will promote the purposes of this Act, as stated in section 601(d); and
51
- 52 (ii) are consistent, to the maximum extent appropriate, with other goals and
53 standards for children established by the State;
54
- 55 (B) has established performance indicators the State will use to assess progress toward
56 achieving those goals that, at a minimum, address the performance of children with
57 disabilities on assessments, drop-out rates, and graduation rates;
58
- 59 (C) will, every two years, report to the Secretary and the public on the progress of the State,
60 and of children with disabilities in the State, toward meeting the goals established under
61 subparagraph (A); and
62

- 1 (D) based on its assessment of that progress, will revise its State improvement plan under
2 subpart 1 of part D as may be needed to improve its performance, if the State receives
3 assistance under that subpart.
4

5 (17) PARTICIPATION IN ASSESSMENTS.--
6

- 7 (A) IN GENERAL.--Children with disabilities are included in general State and district-wide
8 assessment programs, with appropriate accommodations, where necessary. As
9 appropriate, the State or local educational agency--

- 10
11 (i) develops guidelines for the participation of children with disabilities in alternate
12 assessments for those children who cannot participate in State and district-wide
13 assessment programs; and
14
15 (ii) develops and, beginning not later than July 1, 2000, conducts those alternate
16 assessments.
17

- 18
19 (B) REPORTS.--The State educational agency makes available to the public, and reports to
20 the public with the same frequency and in the same detail as it reports on the
21 assessment of nondisabled children, the following:
22

- 23 (i) The number of children with disabilities participating in regular assessments.
24
25 (ii) The number of those children participating in alternate assessments.
26
27 (iii) (I) The performance of those children on regular assessments (beginning not
28 later than July 1, 1998) and on alternate assessments (not later than July 1,
29 2000), if doing so would be statistically sound and would not result in the
30 disclosure of performance results identifiable to individual children.
31
32 (II) Data relating to the performance of children described under subclause (I)
33 shall be disaggregated--
34
35 (aa) for assessments conducted after July 1998; and
36
37 (bb) for assessments conducted before July 1998 if the State is required
38 to disaggregate such data prior to July 1998.
39

40 (18) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.--
41

- 42 (A) EXPENDITURES.--Funds paid to a State under this part will be expended in
43 accordance with all the provisions of this part.
44
45 (B) PROHIBITION AGAINST COMMINGLING.--Funds paid to a State under this part will not
46 be commingled with State funds.
47
48 (C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY
49 SECRETARY.--Except as provided in section 613, funds paid to a State under this part
50 will be used to supplement the level of Federal, State, and local funds (including funds
51 that are not under the direct control of State or local educational agencies) expended
52 for special education and related services provided to children with disabilities under
53 this part and in no case to supplant such Federal, State, and local funds, except that,
54 where the State provides clear and convincing evidence that all children with disabilities
55 have available to them a free appropriate public education, the Secretary may waive, in
56 whole or in part, the requirements of this subparagraph if the Secretary concurs with the
57 evidence provided by the State.
58

59 (19) MAINTENANCE OF STATE FINANCIAL SUPPORT.--
60

- 1 (A) IN GENERAL.--The State does not reduce the amount of State financial support for
2 special education and related services for children with disabilities, or otherwise made
3 available because of the excess costs of educating those children, below the amount of
4 that support for the preceding fiscal year.
5
6 (B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.--The Secretary shall
7 reduce the allocation of funds under section 611 for any fiscal year following the fiscal
8 year in which the State fails to comply with the requirement of subparagraph (A) by the
9 same amount by which the State fails to meet the requirement.
10
11 (C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.--The
12 Secretary may waive the requirement of subparagraph (A) for a State, for one fiscal year
13 at a time, if the Secretary determines that--
14
15 (i) granting a waiver would be equitable due to exceptional or uncontrollable
16 circumstances such as a natural disaster or a precipitous and unforeseen decline
17 in the financial resources of the State; or
18
19 (ii) the State meets the standard in paragraph (18)(C) of this section for a waiver of
20 the requirement to supplement, and not to supplant, funds received under this
21 part.
22
23 (D) SUBSEQUENT YEARS.--If, for any year, a State fails to meet the requirement of
24 subparagraph (A), including any year for which the State is granted a waiver under
25 subparagraph (C), the financial support required of the State in future years under
26 subparagraph (A) shall be the amount that would have been required in the absence of
27 that failure and not the reduced level of the State's support.
28
29 (E) REGULATIONS.--
30
31 (i) The Secretary shall, by regulation, establish procedures (including objective
32 criteria and consideration of the results of compliance reviews of the State
33 conducted by the Secretary) for determining whether to grant a waiver under
34 subparagraph (C)(ii).
35
36 (ii) The Secretary shall publish proposed regulations under clause (i) not later than 6
37 months after the date of the enactment of the Individuals with Disabilities
38 Education Act Amendments of 1997, and shall issue final regulations under
39 clause (i) not later than 1 year after such date of enactment.
40
41
42 (20) PUBLIC PARTICIPATION.--Prior to the adoption of any policies and procedures needed to
43 comply with this section (including any amendments to such policies and procedures), the
44 State ensures that there are public hearings, adequate notice of the hearings, and an
45 opportunity for comment available to the general public, including individuals with disabilities
46 and parents of children with disabilities.
47
48 (21) STATE ADVISORY PANEL.--
49
50 (A) IN GENERAL.--The State has established and maintains an advisory panel for the
51 purpose of providing policy guidance with respect to special education and related
52 services for children with disabilities in the State.
53
54 (B) MEMBERSHIP.--Such advisory panel shall consist of members appointed by the
55 Governor, or any other official authorized under State law to make such appointments,
56 that is representative of the State population and that is composed of individuals
57 involved in, or concerned with, the education of children with disabilities, including--
58
59 (i) parents of children with disabilities;
60
61 (ii) individuals with disabilities;
62

- 1 (iii) teachers;
- 2
- 3 (iv) representatives of institutions of higher education that prepare special education
- 4 and related services personnel;
- 5
- 6 (v) State and local education officials;
- 7
- 8 (vi) administrators of programs for children with disabilities;
- 9
- 10 (vii) representatives of other State agencies involved in the financing or delivery of
- 11 related services to children with disabilities;
- 12
- 13 (viii) representatives of private schools and public charter schools;
- 14
- 15 (ix) at least one representative of a vocational, community, or business organization
- 16 concerned with the provision of transition services to children with disabilities;
- 17 and
- 18
- 19 (x) representatives from the State juvenile and adult corrections agencies.
- 20
- 21 (C) SPECIAL RULE.--A majority of the members of the panel shall be individuals with
- 22 disabilities or parents of children with disabilities.
- 23
- 24 (D) DUTIES.--The advisory panel shall--
- 25
- 26 (i) advise the State educational agency of unmet needs within the State in the
- 27 education of children with disabilities;
- 28
- 29 (ii) comment publicly on any rules or regulations proposed by the State regarding
- 30 the education of children with disabilities;
- 31
- 32 (iii) advise the State educational agency in developing evaluations and reporting on
- 33 data to the Secretary under section 618;
- 34
- 35 (iv) advise the State educational agency in developing corrective action plans to
- 36 address findings identified in Federal monitoring reports under this part; and
- 37
- 38 (v) advise the State educational agency in developing and implementing policies
- 39 relating to the coordination of services for children with disabilities.
- 40
- 41 (22) SUSPENSION AND EXPULSION RATES.--
- 42
- 43 (A) IN GENERAL.--The State educational agency examines data to determine if significant
- 44 discrepancies are occurring in the rate of long-term suspensions and expulsions of
- 45 children with disabilities--
- 46
- 47 (i) among local educational agencies in the State; or
- 48
- 49 (ii) compared to such rates for nondisabled children within such agencies.
- 50
- 51 (B) REVIEW AND REVISION OF POLICIES.--If such discrepancies are occurring, the State
- 52 educational agency reviews and, if appropriate, revises (or requires the affected State
- 53 or local educational agency to revise) its policies, procedures, and practices relating to
- 54 the development and implementation of IEPs, the use of behavioral interventions, and
- 55 procedural safeguards, to ensure that such policies, procedures, and practices comply
- 56 with this Act.
- 57
- 58 (b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION
- 59 OR DIRECT SERVICES.--If the State educational agency provides free appropriate public
- 60 education to children with disabilities, or provides direct services to such children, such agency--
- 61

- 1 (1) shall comply with any additional requirements of section 613(a), as if such agency were a local
2 educational agency; and
3
4 (2) may use amounts that are otherwise available to such agency under this part to serve those
5 children without regard to section 613(a)(2)(A)(i) (relating to excess costs).
6
7 (c) EXCEPTION FOR PRIOR STATE PLANS.--
8
9 (1) IN GENERAL.--If a State has on file with the Secretary policies and procedures that
10 demonstrate that such State meets any requirement of subsection (a), including any policies
11 and procedures filed under this part as in effect before the effective date of the Individuals
12 with Disabilities Education Act Amendments of 1997, the Secretary shall consider such State
13 to have met such requirement for purposes of receiving a grant under this part.
14
15 (2) MODIFICATIONS MADE BY STATE.--Subject to paragraph (3), an application submitted by a
16 State in accordance with this section shall remain in effect until the State submits to the
17 Secretary such modifications as the State deems necessary. This section shall apply to a
18 modification to an application to the same extent and in the same manner as this section
19 applies to the original plan.
20
21 (3) MODIFICATIONS REQUIRED BY THE SECRETARY.--If, after the effective date of the
22 Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are
23 amended (or the regulations developed to carry out this Act are amended), or there is a new
24 interpretation of this Act by a Federal court, or there is an official finding of noncompliance with
25 Federal law or regulations, the Secretary may require a State to modify its application only to
26 the extent necessary to ensure the State's compliance with this part.
27
28 (d) APPROVAL BY THE SECRETARY.--
29
30 (1) IN GENERAL.--If the Secretary determines that a State is eligible to receive a grant under this
31 part, the Secretary shall notify the State of that determination.
32
33 (2) NOTICE AND HEARING.--The Secretary shall not make a final determination that a State is not
34 eligible to receive a grant under this part until after providing the State--
35
36 (A) with reasonable notice; and
37
38 (B) with an opportunity for a hearing.
39
40 (e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.--Nothing in this title permits a State to
41 reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the
42 Social Security Act with respect to the provision of a free appropriate public education for children
43 with disabilities in the State.
44
45 (f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.--
46
47 (1) IN GENERAL.--If, on the date of enactment of the Education of the Handicapped Act
48 Amendments of 1983, a State educational agency is prohibited by law from providing for the
49 participation in special programs of children with disabilities enrolled in private elementary and
50 secondary schools as required by subsection (a)(10)(A), the Secretary shall, notwithstanding
51 such provision of law, arrange for the provision of services to such children through
52 arrangements which shall be subject to the requirements of such subsection.
53
54 (2) PAYMENTS.--
55
56 (A) Determination of amounts.--If the Secretary arranges for services pursuant to this
57 subsection, the Secretary, after consultation with the appropriate public and private
58 school officials, shall pay to the provider of such services for a fiscal year an amount per
59 child that does not exceed the amount determined by dividing--
60
61 (i) the total amount received by the State under this part for such fiscal year; by
62

- 1 (ii) the number of children with disabilities served in the prior year, as reported to the
2 Secretary by the State under section 618.
3
4 (B) WITHHOLDING OF CERTAIN AMOUNTS.--Pending final resolution of any investigation
5 or complaint that could result in a determination under this subsection, the Secretary
6 may withhold from the allocation of the affected State educational agency the amount
7 the Secretary estimates would be necessary to pay the cost of services described in
8 subparagraph (A).
9
10 (C) PERIOD OF PAYMENTS.--The period under which payments are made under
11 subparagraph (A) shall continue until the Secretary determines that there will no longer
12 be any failure or inability on the part of the State educational agency to meet the
13 requirements of subsection (a)(10)(A).
14
15 (3) NOTICE AND HEARING.--
16
17 (A) IN GENERAL.--The Secretary shall not take any final action under this subsection until
18 the State educational agency affected by such action has had an opportunity, for at
19 least 45 days after receiving written notice thereof, to submit written objections and to
20 appear before the Secretary or the Secretary's designee to show cause why such
21 action should not be taken.
22
23 (B) REVIEW OF ACTION.--If a State educational agency is dissatisfied with the Secretary's
24 final action after a proceeding under subparagraph (A), such agency may, not later than
25 60 days after notice of such action, file with the United States court of appeals for the
26 circuit in which such State is located a petition for review of that action. A copy of the
27 petition shall be forthwith transmitted by the clerk of the court to the Secretary. The
28 Secretary thereupon shall file in the court the record of the proceedings on which the
29 Secretary based the Secretary's action, as provided in section 2112 of title 28, United
30 States Code.
31
32 (C) REVIEW OF FINDINGS OF FACT.--The findings of fact by the Secretary, if supported by
33 substantial evidence, shall be conclusive, but the court, for good cause shown, may
34 remand the case to the Secretary to take further evidence, and the Secretary may
35 thereupon make new or modified findings of fact and may modify the Secretary's
36 previous action, and shall file in the court the record of the further proceedings. Such
37 new or modified findings of fact shall likewise be conclusive if supported by substantial
38 evidence.
39
40 (D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME
41 COURT.--Upon the filing of a petition under subparagraph (B), the United States court
42 of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in
43 whole or in part. The judgment of the court shall be subject to review by the Supreme
44 Court of the United States upon certiorari or certification as provided in section 1254 of
45 title 28, United States Code.
46

47 **SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.**

- 48
49 (a) IN GENERAL.--A local educational agency is eligible for assistance under this part for a fiscal year if
50 such agency demonstrates to the satisfaction of the State educational agency that it meets each of
51 the following conditions:
52
53 (1) CONSISTENCY WITH STATE POLICIES.--The local educational agency, in providing for the
54 education of children with disabilities within its jurisdiction, has in effect policies, procedures,
55 and programs that are consistent with the State policies and procedures established under
56 section 612.
57
58 (2) USE OF AMOUNTS.--
59
60 (A) IN GENERAL.--Amounts provided to the local educational agency under this part shall
61 be expended in accordance with the applicable provisions of this part and-
62

- 1 (i) shall be used only to pay the excess costs of providing special education and
2 related services to children with disabilities;
3
4 (ii) shall be used to supplement State, local, and other Federal funds and not to
5 supplant such funds; and
6
7 (iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the
8 level of expenditures for the education of children with disabilities made by the
9 local educational agency from local funds below the level of those expenditures
10 for the preceding fiscal year.
11
12 (B) EXCEPTION.--Notwithstanding the restriction in subparagraph (A)(iii), a local
13 educational agency may reduce the level of expenditures where such reduction is
14 attributable to--
15
16 (i) the voluntary departure, by retirement or otherwise, or departure for just cause, of
17 special education personnel;
18
19 (ii) a decrease in the enrollment of children with disabilities;
20
21 (iii) the termination of the obligation of the agency, consistent with this part, to
22 provide a program of special education to a particular child with a disability that is
23 an exceptionally costly program, as determined by the State educational agency,
24 because the child--
25
26 (I) has left the jurisdiction of the agency;
27
28 (II) has reached the age at which the obligation of the agency to provide a free
29 appropriate public education to the child has terminated; or
30
31 (III) no longer needs such program of special education; or
32
33 (iv) the termination of costly expenditures for long-term purchases, such as the
34 acquisition of equipment or the construction of school facilities.
35
36 (C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.--
37
38 (i) Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for
39 which amounts appropriated to carry out section 611 exceeds \$4,100,000,000, a
40 local educational agency may treat as local funds, for the purpose of such
41 clauses, up to 20 percent of the amount of funds it receives under this part that
42 exceeds the amount it received under this part for the previous fiscal year.
43
44 (ii) Notwithstanding clause (i), if a State educational agency determines that a local
45 educational agency is not meeting the requirements of this part, the State
46 educational agency may prohibit the local educational agency from treating funds
47 received under this part as local funds under clause (i) for any fiscal year, only if it
48 is authorized to do so by the State constitution or a State statute.
49
50 (D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.--Notwithstanding
51 subparagraph (A) or any other provision of this part, a local educational agency may use
52 funds received under this part for any fiscal year to carry out a schoolwide program
53 under section 1114 of the Elementary and Secondary Education Act of 1965, except
54 that the amount so used in any such program shall not exceed--
55
56 (i) the number of children with disabilities participating in the schoolwide program;
57 multiplied by
58
59 (ii) (I) the amount received by the local educational agency under this part for that
60 fiscal year; divided by
61
62 (II) the number of children with disabilities in the jurisdiction of that agency.

- 1 (3) PERSONNEL DEVELOPMENT.--The local educational agency--
2
3 (A) shall ensure that all personnel necessary to carry out this part are appropriately and
4 adequately prepared, consistent with the requirements of section 653(c)(3)(D); and
5
6 (B) to the extent such agency determines appropriate, shall contribute to and use the
7 comprehensive system of personnel development of the State established under
8 section 612(a)(14).
9
- 10 (4) PERMISSIVE USE OF FUNDS.--Notwithstanding paragraph (2)(A) or section 612(a)(18)(B)
11 (relating to commingled funds), funds provided to the local educational agency under this part
12 may be used for the following activities:
13
- 14 (A) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN.--For the
15 costs of special education and related services and supplementary aids and services
16 provided in a regular class or other education-related setting to a child with a disability in
17 accordance with the individualized education program of the child, even if one or more
18 nondisabled children benefit from such services.
19
- 20 (B) INTEGRATED AND COORDINATED SERVICES SYSTEM.--To develop and implement
21 a fully integrated and coordinated services system in accordance with subsection (f).
22
- 23 (5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.--In carrying out this part
24 with respect to charter schools that are public schools of the local educational agency, the
25 local educational agency--
26
- 27 (A) serves children with disabilities attending those schools in the same manner as it serves
28 children with disabilities in its other schools; and
29
- 30 (B) provides funds under this part to those schools in the same manner as it provides those
31 funds to its other schools.
32
- 33 (6) INFORMATION FOR STATE EDUCATIONAL AGENCY.--The local educational agency shall
34 provide the State educational agency with information necessary to enable the State
35 educational agency to carry out its duties under this part, including, with respect to paragraphs
36 (16) and (17) of section 612(a), information relating to the performance of children with
37 disabilities participating in programs carried out under this part.
38
- 39 (7) PUBLIC INFORMATION.--The local educational agency shall make available to parents of
40 children with disabilities and to the general public all documents relating to the eligibility of
41 such agency under this part.
42
- 43 (b) EXCEPTION FOR PRIOR LOCAL PLANS.--
44
- 45 (1) IN GENERAL.--If a local educational agency or State agency has on file with the State
46 educational agency policies and procedures that demonstrate that such local educational
47 agency, or such State agency, as the case may be, meets any requirement of subsection (a),
48 including any policies and procedures filed under this part as in effect before the effective
49 date of the Individuals with Disabilities Education Act Amendments of 1997, the State
50 educational agency shall consider such local educational agency or State agency, as the case
51 may be, to have met such requirement for purposes of receiving assistance under this part.
52
- 53 (2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.--Subject to paragraph (3), an
54 application submitted by a local educational agency in accordance with this section shall
55 remain in effect until it submits to the State educational agency such modifications as the local
56 educational agency deems necessary.
57

- 1 (3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.--If, after the effective
2 date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of
3 this Act are amended (or the regulations developed to carry out this Act are amended), or
4 there is a new interpretation of this Act by Federal or State courts, or there is an official finding
5 of noncompliance with Federal or State law or regulations, the State educational agency may
6 require a local educational agency to modify its application only to the extent necessary to
7 ensure the local educational agency's compliance with this part or State law.
8
- 9 (c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF
10 INELIGIBILITY.--If the State educational agency determines that a local educational agency or State
11 agency is not eligible under this section, the State educational agency shall notify the local
12 educational agency or State agency, as the case may be, of that determination and shall provide
13 such local educational agency or State agency with reasonable notice and an opportunity for a
14 hearing.
15
- 16 (d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.--
17
- 18 (1) IN GENERAL.--If the State educational agency, after reasonable notice and an opportunity for
19 a hearing, finds that a local educational agency or State agency that has been determined to
20 be eligible under this section is failing to comply with any requirement described in subsection
21 (a), the State educational agency shall reduce or shall not provide any further payments to the
22 local educational agency or State agency until the State educational agency is satisfied that
23 the local educational agency or State agency, as the case may be, is complying with that
24 requirement.
25
- 26 (2) ADDITIONAL REQUIREMENT.--Any State agency or local educational agency in receipt of a
27 notice described in paragraph (1) shall, by means of public notice, take such measures as may
28 be necessary to bring the pendency of an action pursuant to this subsection to the attention
29 of the public within the jurisdiction of such agency.
30
- 31 (3) CONSIDERATION.--In carrying out its responsibilities under paragraph (1), the State
32 educational agency shall consider any decision made in a hearing held under section 615 that
33 is adverse to the local educational agency or State agency involved in that decision.
34
- 35 (e) JOINT ESTABLISHMENT OF ELIGIBILITY.--
36
- 37 (1) JOINT ESTABLISHMENT.--
38
- 39 (A) IN GENERAL.--A State educational agency may require a local educational agency to
40 establish its eligibility jointly with another local educational agency if the State
41 educational agency determines that the local educational agency would be ineligible
42 under this section because the local educational agency would not be able to establish
43 and maintain programs of sufficient size and scope to effectively meet the needs of
44 children with disabilities.
45
- 46 (B) CHARTER SCHOOL EXCEPTION.--A State educational agency may not require a
47 charter school that is a local educational agency to jointly establish its eligibility under
48 subparagraph (A) unless it is explicitly permitted to do so under the State's charter
49 school statute.
50
- 51 (2) AMOUNT OF PAYMENTS.--If a State educational agency requires the joint establishment of
52 eligibility under paragraph (1), the total amount of funds made available to the affected local
53 educational agencies shall be equal to the sum of the payments that each such local
54 educational agency would have received under section 611(e) if such agencies were eligible
55 for such payments.
56
- 57 (3) REQUIREMENTS.--Local educational agencies that establish joint eligibility under this
58 subsection shall--
59
- 60 (A) adopt policies and procedures that are consistent with the State's policies and
61 procedures under section 612(a); and
62

- 1 (B) be jointly responsible for implementing programs that receive assistance under this
2 part.
3
- 4 (4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.--
5
6 (A) IN GENERAL.--If an educational service agency is required by State law to carry out
7 programs under this part, the joint responsibilities given to local educational agencies
8 under this subsection shall--
9
- 10 (i) not apply to the administration and disbursement of any payments received by
11 that educational service agency; and
12
- 13 (ii) be carried out only by that educational service agency.
14
- 15 (B) ADDITIONAL REQUIREMENT.--Notwithstanding any other provision of this subsection,
16 an educational service agency shall provide for the education of children with disabilities
17 in the least restrictive environment, as required by section 612(a)(5).
18
- 19 (f) COORDINATED SERVICES SYSTEM.--
20
- 21 (1) IN GENERAL.--A local educational agency may not use more than 5 percent of the amount
22 such agency receives under this part for any fiscal year, in combination with other amounts
23 (which shall include amounts other than education funds), to develop and implement a
24 coordinated services system designed to improve results for children and families, including
25 children with disabilities and their families.
26
- 27 (2) ACTIVITIES.--In implementing a coordinated services system under this subsection, a local
28 educational agency may carry out activities that include--
29
- 30 (A) improving the effectiveness and efficiency of service delivery, including developing
31 strategies that promote accountability for results;
32
- 33 (B) service coordination and case management that facilitates the linkage of individualized
34 education programs under this part and individualized family service plans under part C
35 with individualized service plans under multiple Federal and State programs, such as
36 title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social
37 Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security
38 income);
39
- 40 (C) developing and implementing interagency financing strategies for the provision of
41 education, health, mental health, and social services, including transition services and
42 related services under this Act; and
43
- 44 (D) interagency personnel development for individuals working on coordinated services.
45
- 46 (3) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY
47 EDUCATION ACT OF 1965.--If a local educational agency is carrying out a coordinated
48 services project under title XI of the Elementary and Secondary Education Act of 1965 and a
49 coordinated services project under this part in the same schools, such agency shall use
50 amounts under this subsection in accordance with the requirements of that title.
51
- 52
- 53 (g) SCHOOL-BASED IMPROVEMENT PLAN.--
54
- 55 (1) IN GENERAL.--Each local educational agency may, in accordance with paragraph (2), use
56 funds made available under this part to permit a public school within the jurisdiction of the local
57 educational agency to design, implement, and evaluate a school-based improvement plan
58 that is consistent with the purposes described in section 651(b) and that is designed to
59 improve educational and transitional results for all children with disabilities and, as appropriate,
60 for other children consistent with subparagraphs (A) and (B) of subsection (a)(4) in that public
61 school.
62

1 (2) AUTHORITY.--
2

3 (A) IN GENERAL.--A State educational agency may grant authority to a local educational
4 agency to permit a public school described in paragraph (1) (through a school-based
5 standing panel established under paragraph (4)(B)) to design, implement, and evaluate
6 a school-based improvement plan described in paragraph (1) for a period not to exceed
7 3 years.
8

9 (B) RESPONSIBILITY OF LOCAL EDUCATIONAL AGENCY.--If a State educational agency
10 grants the authority described in subparagraph (A), a local educational agency that is
11 granted such authority shall have the sole responsibility of oversight of all activities
12 relating to the design, implementation, and evaluation of any school-based
13 improvement plan that a public school is permitted to design under this subsection.
14

15 (3) PLAN REQUIREMENTS.--A school-based improvement plan described in paragraph (1) shall--
16

17 (A) be designed to be consistent with the purposes described in section 651(b) and to
18 improve educational and transitional results for all children with disabilities and, as
19 appropriate, for other children consistent with subparagraphs (A) and (B) of subsection
20 (a)(4), who attend the school for which the plan is designed and implemented;
21

22 (B) be designed, evaluated, and, as appropriate, implemented by a school-based standing
23 panel established in accordance with paragraph (4)(B);
24

25 (C) include goals and measurable indicators to assess the progress of the public school in
26 meeting such goals; and
27

28 (D) ensure that all children with disabilities receive the services described in the
29 individualized education programs of such children.
30

31 (4) RESPONSIBILITIES OF THE LOCAL EDUCATIONAL AGENCY.--A local educational agency
32 that is granted authority under paragraph (2) to permit a public school to design, implement,
33 and evaluate a school-based improvement plan shall--
34

35 (A) select each school under the jurisdiction of such agency that is eligible to design,
36 implement, and evaluate such a plan;
37

38 (B) require each school selected under subparagraph (A), in accordance with criteria
39 established by such local educational agency under subparagraph (C), to establish a
40 school-based standing panel to carry out the duties described in paragraph (3)(B);
41

42 (C) establish--
43

44 (i) criteria that shall be used by such local educational agency in the selection of an
45 eligible school under subparagraph (A);
46

47 (ii) criteria that shall be used by a public school selected under subparagraph (A) in
48 the establishment of a school-based standing panel to carry out the duties
49 described in paragraph (3)(B) and that shall ensure that the membership of such
50 panel reflects the diversity of the community in which the public school is located
51 and includes, at a minimum--
52

53 (I) parents of children with disabilities who attend such public school,
54 including parents of children with disabilities from unserved and
55 underserved populations, as appropriate;
56

57 (II) special education and general education teachers of such public school;
58

59 (III) special education and general education administrators, or the designee of
60 such administrators, of such public school; and
61

- 1 (IV) related services providers who are responsible for providing services to the
2 children with disabilities who attend such public school; and
3
- 4 (iii) criteria that shall be used by such local educational agency with respect to the
5 distribution of funds under this part to carry out this subsection;
6
- 7 (D) disseminate the criteria established under subparagraph (C) to local school district
8 personnel and local parent organizations within the jurisdiction of such local educational
9 agency;
10
- 11 (E) require a public school that desires to design, implement, and evaluate a school-based
12 improvement plan to submit an application at such time, in such manner, and
13 accompanied by such information as such local educational agency shall reasonably
14 require; and
15
- 16 (F) establish procedures for approval by such local educational agency of a school-based
17 improvement plan designed under this subsection.
18
- 19 (5) LIMITATION.--A school-based improvement plan described in paragraph (1) may be submitted
20 to a local educational agency for approval only if a consensus with respect to any matter
21 relating to the design, implementation, or evaluation of the goals of such plan is reached by
22 the school-based standing panel that designed such plan.
23
- 24 (6) ADDITIONAL REQUIREMENTS.--
25
- 26 (A) PARENTAL INVOLVEMENT.--In carrying out the requirements of this subsection, a
27 local educational agency shall ensure that the parents of children with disabilities are
28 involved in the design, evaluation, and, where appropriate, implementation of school-
29 based improvement plans in accordance with this subsection.
30
- 31 (B) PLAN APPROVAL.--A local educational agency may approve a school-based
32 improvement plan of a public school within the jurisdiction of such agency for a period of
33 3 years, if--
34
- 35 (i) the approval is consistent with the policies, procedures, and practices
36 established by such local educational agency and in accordance with this
37 subsection; and
38
- 39 (ii) a majority of parents of children who are members of the school-based standing
40 panel, and a majority of other members of the school-based standing panel, that
41 designed such plan agree in writing to such plan.
42
- 43 (7) EXTENSION OF PLAN.--If a public school within the jurisdiction of a local educational agency
44 meets the applicable requirements and criteria described in paragraphs (3) and (4) at the
45 expiration of the 3-year approval period described in paragraph (6)(B), such agency may
46 approve a school-based improvement plan of such school for an additional 3-year period.
47
- 48 (h) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.--
49
- 50 (1) IN GENERAL.--A State educational agency shall use the payments that would otherwise have
51 been available to a local educational agency or to a State agency to provide special education
52 and related services directly to children with disabilities residing in the area served by that local
53 agency, or for whom that State agency is responsible, if the State educational agency
54 determines that the local education agency or State agency, as the case may be--
55
- 56 (A) has not provided the information needed to establish the eligibility of such agency
57 under this section;
58
- 59 (B) is unable to establish and maintain programs of free appropriate public education that
60 meet the requirements of subsection (a);
61

(C) is unable or unwilling to be consolidated with one or more local educational agencies in order to establish and maintain such programs; or

(D) has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of such children.

(2) **MANNER AND LOCATION OF EDUCATION AND SERVICES.**--The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State agency considers appropriate. Such education and services shall be provided in accordance with this part.

(I) **STATE AGENCY ELIGIBILITY.**--Any State agency that desires to receive a subgrant for any fiscal year under section 611(g) shall demonstrate to the satisfaction of the State educational agency that--

(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

(j) **DISCIPLINARY INFORMATION.**--The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

(a) **EVALUATIONS AND REEVALUATIONS.**--

(1) **INITIAL EVALUATIONS.**--

(A) **IN GENERAL.**--A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

(B) **PROCEDURES.**--Such initial evaluation shall consist of procedures--

(i) to determine whether a child is a child with a disability (as defined in section 602(3)); and

(ii) to determine the educational needs of such child.

(C) **PARENTAL CONSENT.**--

(i) **IN GENERAL.**--The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

- 1 (ii) REFUSAL.--If the parents of such child refuse consent for the evaluation, the
2 agency may continue to pursue an evaluation by utilizing the mediation and due
3 process procedures under section 615, except to the extent inconsistent with
4 State law relating to parental consent.
5
- 6 (2) REEVALUATIONS.--A local educational agency shall ensure that a reevaluation of each child
7 with a disability is conducted--
8
- 9 (A) if conditions warrant a reevaluation or if the child's parent or teacher requests a
10 reevaluation, but at least once every 3 years; and
11
- 12 (B) in accordance with subsections (b) and (c).
13
- 14 (b) EVALUATION PROCEDURES.--
15
- 16 (1) NOTICE.--The local educational agency shall provide notice to the parents of a child with a
17 disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes
18 any evaluation procedures such agency proposes to conduct.
19
- 20 (2) CONDUCT OF EVALUATION.--In conducting the evaluation, the local educational agency
21 shall--
22
- 23 (A) use a variety of assessment tools and strategies to gather relevant functional and
24 developmental information, including information provided by the parent, that may
25 assist in determining whether the child is a child with a disability and the content of the
26 child's individualized education program, including information related to enabling the
27 child to be involved in and progress in the general curriculum or, for preschool children,
28 to participate in appropriate activities;
29
- 30 (B) not use any single procedure as the sole criterion for determining whether a child is a
31 child with a disability or determining an appropriate educational program for the child;
32 and
33
- 34 (C) use technically sound instruments that may assess the relative contribution of cognitive
35 and behavioral factors, in addition to physical or developmental factors.
36
- 37 (3) ADDITIONAL REQUIREMENTS.--Each local educational agency shall ensure that--
38
- 39 (A) tests and other evaluation materials used to assess a child under this section--
40
- 41 (i) are selected and administered so as not to be discriminatory on a racial or cultural
42 basis; and
43
- 44 (ii) are provided and administered in the child's native language or other mode of
45 communication, unless it is clearly not feasible to do so; and
46
- 47 (B) any standardized tests that are given to the child--
48
- 49 (i) have been validated for the specific purpose for which they are used;
50
- 51 (ii) are administered by trained and knowledgeable personnel; and
52
- 53 (iii) are administered in accordance with any instructions provided by the producer of
54 such tests;
55
- 56 (C) the child is assessed in all areas of suspected disability; and
57
- 58 (D) assessment tools and strategies that provide relevant information that directly assists
59 persons in determining the educational needs of the child are provided.
60
- 61 (4) DETERMINATION OF ELIGIBILITY.--Upon completion of administration of tests and other
62 evaluation materials--

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2
3 (A) the determination of whether the child is a child with a disability as defined in section
4 602(3) shall be made by a team of qualified professionals and the parent of the child in
5 accordance with paragraph (5); and
6
7 (B) a copy of the evaluation report and the documentation of determination of eligibility will
8 be given to the parent.
9
10 (5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.--In making a determination of eligibility
11 under paragraph (4)(A), a child shall not be determined to be a child with a disability if the
12 determinant factor for such determination is lack of instruction in reading or math or limited
13 English proficiency.
14 (c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.--
15
16 (1) REVIEW OF EXISTING EVALUATION DATA.--As part of an initial evaluation (if appropriate)
17 and as part of any reevaluation under this section, the IEP Team described in subsection
18 (d)(1)(B) and other qualified professionals, as appropriate, shall--
19
20 (A) review existing evaluation data on the child, including evaluations and information
21 provided by the parents of the child, current classroom-based assessments and
22 observations, and teacher and related services providers observation; and
23
24 (B) on the basis of that review, and input from the child's parents, identify what additional
25 data, if any, are needed to determine--
26
27 (i) whether the child has a particular category of disability, as described in section
28 602(3), or, in case of a reevaluation of a child, whether the child continues to have
29 such a disability;
30
31 (ii) the present levels of performance and educational needs of the child;
32
33 (iii) whether the child needs special education and related services, or in the case of
34 a reevaluation of a child, whether the child continues to need special education
35 and related services; and
36
37 (iv) whether any additions or modifications to the special education and related
38 services are needed to enable the child to meet the measurable annual goals set
39 out in the individualized education program of the child and to participate, as
40 appropriate, in the general curriculum.
41
42 (2) SOURCE OF DATA.--The local educational agency shall administer such tests and other
43 evaluation materials as may be needed to produce the data identified by the IEP Team under
44 paragraph (1)(B).
45
46 (3) PARENTAL CONSENT.--Each local educational agency shall obtain informed parental
47 consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a
48 child with a disability, except that such informed parent consent need not be obtained if the
49 local educational agency can demonstrate that it had taken reasonable measures to obtain
50 such consent and the child's parent has failed to respond.
51
52 (4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.--If the IEP Team and other
53 qualified professionals, as appropriate, determine that no additional data are needed to
54 determine whether the child continues to be a child with a disability, the local educational
55 agency--
56
57 (A) shall notify the child's parents of--
58
59 (i) that determination and the reasons for it; and
60
61 (ii) the right of such parents to request an assessment to determine whether the
62 child continues to be a child with a disability; and

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.--A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(d) INDIVIDUALIZED EDUCATION PROGRAMS.--

(1) DEFINITIONS.--As used in this title:

(A) INDIVIDUALIZED EDUCATION PROGRAM.--The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes--

(i) a statement of the child's present levels of educational performance, including--

(I) how the child's disability affects the child's involvement and progress in the general curriculum; or

(II) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to--

(I) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

(II) meeting each of the child's other educational needs that result from the child's disability;

(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--

(I) to advance appropriately toward attaining the annual goals;

(II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and

(III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii);

(v) (I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and

(II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of--

(aa) why that assessment is not appropriate for the child; and

(bb) how the child will be assessed;

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- (vi) the projected date for the beginning of the services and modifications described in clause (iii), and the anticipated frequency, location, and duration of those services and modifications;
 - (vii)
 - (I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program);
 - (II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and
 - (III) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m); and
 - (viii) a statement of--
 - (I) how the child's progress toward the annual goals described in clause (ii) will be measured; and
 - (II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of--
 - (aa) their child's progress toward the annual goals described in clause (ii); and
 - (bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.
 - (B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.--The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of--
 - (i) the parents of a child with a disability;
 - (ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);
 - (iii) at least one special education teacher, or where appropriate, at least one special education provider of such child;
 - (iv) a representative of the local educational agency who--
 - (I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (II) is knowledgeable about the general curriculum; and
 - (III) is knowledgeable about the availability of resources of the local educational agency;
 - (v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);
 - (vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(vii) whenever appropriate, the child with a disability.

(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.--

- (A) IN GENERAL.--At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).
- (B) PROGRAM FOR CHILD AGED 3 THROUGH 5.--In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is--
- (i) consistent with State policy; and
 - (ii) agreed to by the agency and the child's parents.

(3) DEVELOPMENT OF IEP.--

- (A) IN GENERAL.--In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider--
- (i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and
 - (ii) the results of the initial evaluation or most recent evaluation of the child.
- (B) CONSIDERATION OF SPECIAL FACTORS.--The IEP Team shall--
- (i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
 - (ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;
 - (iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
 - (iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
 - (v) consider whether the child requires assistive technology devices and services.
- (C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.--The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii).

1
2 (4) REVIEW AND REVISION OF IEP.--
3

4 (A) IN GENERAL.--The local educational agency shall ensure that, subject to subparagraph
5 (B), the IEP Team--
6

- 7 (i) reviews the child's IEP periodically, but not less than annually to determine
8 whether the annual goals for the child are being achieved; and
9 (ii) revises the IEP as appropriate to address--

10 (I) any lack of expected progress toward the annual goals and in the general
11 curriculum, where appropriate;
12

13 (II) the results of any reevaluation conducted under this section;
14

15 (III) information about the child provided to, or by, the parents, as described in
16 subsection (c)(1)(B);
17

18 (IV) the child's anticipated needs; or
19

20 (V) other matters.
21

22 (B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.--The regular
23 education teacher of the child, as a member of the IEP Team, shall, to the extent
24 appropriate, participate in the review and revision of the IEP of the child.
25
26

27 (5) FAILURE TO MEET TRANSITION OBJECTIVES.--If a participating agency, other than the
28 local educational agency, fails to provide the transition services described in the IEP in
29 accordance with paragraph (1)(A)(vii), the local educational agency shall reconvene the IEP
30 Team to identify alternative strategies to meet the transition objectives for the child set out in
31 that program.
32

33 (6) CHILDREN WITH DISABILITIES IN ADULT PRISONS.--
34

35 (A) IN GENERAL.--The following requirements do not apply to children with disabilities who
36 are convicted as adults under State law and incarcerated in adult prisons:
37

38 (i) The requirements contained in section 612(a)(17) and paragraph (1)(A)(v) of this
39 subsection (relating to participation of children with disabilities in general
40 assessments).
41

42 (ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this
43 subsection (relating to transition planning and transition services), do not apply
44 with respect to such children whose eligibility under this part will end, because of
45 their age, before they will be released from prison.
46

47 (B) ADDITIONAL REQUIREMENT.--If a child with a disability is convicted as an adult under
48 State law and incarcerated in an adult prison, the child's IEP team may modify the child's
49 IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and
50 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling
51 penological interest that cannot otherwise be accommodated.
52

53 (e) CONSTRUCTION.--Nothing in this section shall be construed to require the IEP team to include
54 information under one component of a child's IEP that is already contained under another
55 component of such IEP.
56

57 (f) EDUCATIONAL PLACEMENTS.--Each local educational agency or State educational agency shall
58 ensure that the parents of each child with a disability are members of any group that makes
59 decisions on the educational placement of their child.
60

1 **SEC. 615. PROCEDURAL SAFEGUARDS.**

2
3 (a) ESTABLISHMENT OF PROCEDURES.--Any State educational agency, State agency, or local
4 educational agency that receives assistance under this part shall establish and maintain procedures
5 in accordance with this section to ensure that children with disabilities and their parents are
6 guaranteed procedural safeguards with respect to the provision of free appropriate public education
7 by such agencies.
8

9 (b) TYPES OF PROCEDURES.--The procedures required by this section shall include--

- 10
11 (1) an opportunity for the parents of a child with a disability to examine all records relating to such
12 child and to participate in meetings with respect to the identification, evaluation, and
13 educational placement of the child, and the provision of a free appropriate public education to
14 such child, and to obtain an independent educational evaluation of the child;
15
16 (2) procedures to protect the rights of the child whenever the parents of the child are not known,
17 the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the
18 State, including the assignment of an individual (who shall not be an employee of the State
19 educational agency, the local educational agency, or any other agency that is involved in the
20 education or care of the child) to act as a surrogate for the parents;
21
22 (3) written prior notice to the parents of the child whenever such agency--
23
24 (A) proposes to initiate or change; or
25
26 (B) refuses to initiate or change; the identification, evaluation, or educational placement of
27 the child, in accordance with subsection (c), or the provision of a free appropriate public
28 education to the child;
29
30 (4) procedures designed to ensure that the notice required by paragraph (3) is in the native
31 language of the parents, unless it clearly is not feasible to do so;
32
33 (5) an opportunity for mediation in accordance with subsection (e);
34
35 (6) an opportunity to present complaints with respect to any matter relating to the identification,
36 evaluation, or educational placement of the child, or the provision of a free appropriate public
37 education to such child;
38
39 (7) procedures that require the parent of a child with a disability, or the attorney representing the
40 child, to provide notice (which shall remain confidential)--
41
42 (A) to the State educational agency or local educational agency, as the case may be, in the
43 complaint filed under paragraph (6); and
44
45 (B) that shall include--
46
47 (i) the name of the child, the address of the residence of the child, and the name of
48 the school the child is attending;
49
50 (ii) a description of the nature of the problem of the child relating to such proposed
51 initiation or change, including facts relating to such problem; and
52
53 (iii) a proposed resolution of the problem to the extent known and available to the
54 parents at the time; and
55
56 (8) procedures that require the State educational agency to develop a model form to assist
57 parents in filing a complaint in accordance with paragraph (7).
58

59 (c) CONTENT OF PRIOR WRITTEN NOTICE.--The notice required by subsection (b)(3) shall include--

- 60
61 (1) a description of the action proposed or refused by the agency;
62

- (2) an explanation of why the agency proposes or refuses to take the action;
 - (3) a description of any other options that the agency considered and the reasons why those options were rejected;
 - (4) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;
 - (5) a description of any other factors that are relevant to the agency's proposal or refusal;
 - (6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
 - (7) sources for parents to contact to obtain assistance in understanding the provisions of this part.
- (d) PROCEDURAL SAFEGUARDS NOTICE.--
- (1) IN GENERAL.--A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum--
 - (A) upon initial referral for evaluation;
 - (B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and
 - (C) upon registration of a complaint under subsection (b)(6).
 - (2) CONTENTS.--The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to--
 - (A) independent educational evaluation;
 - (B) prior written notice;
 - (C) parental consent;
 - (D) access to educational records;
 - (E) opportunity to present complaints;
 - (F) the child's placement during pendency of due process proceedings;
 - (G) procedures for students who are subject to placement in an interim alternative educational setting;
 - (H) requirements for unilateral placement by parents of children in private schools at public expense;
 - (I) mediation;
 - (J) due process hearings, including requirements for disclosure of evaluation results and recommendations;
 - (K) State-level appeals (if applicable in that State);
 - (L) civil actions; and
 - (M) attorneys' fees.

1
2 (e) MEDIATION.--
3

4 (1) IN GENERAL.--Any State educational agency or local educational agency that receives
5 assistance under this part shall ensure that procedures are established and implemented to
6 allow parties to disputes involving any matter described in subsection (b)(6) to resolve such
7 disputes through a mediation process which, at a minimum, shall be available whenever a
8 hearing is requested under subsection (f) or (k).
9

10 (2) REQUIREMENTS.--Such procedures shall meet the following requirements:
11

12 (A) The procedures shall ensure that the mediation process--
13

14 (i) is voluntary on the part of the parties;
15

16 (ii) is not used to deny or delay a parent's right to a due process hearing under
17 subsection (f), or to deny any other rights afforded under this part; and
18

19 (iii) is conducted by a qualified and impartial mediator who is trained in effective
20 mediation techniques.
21

22 (B) A local educational agency or a State agency may establish procedures to require
23 parents who choose not to use the mediation process to meet, at a time and location
24 convenient to the parents, with a disinterested party who is under contract with--
25

26 (i) a parent training and information center or community parent resource center in
27 the State established under section 682 or 683; or
28

29 (ii) an appropriate alternative dispute resolution entity;
30

31 to encourage the use, and explain the benefits, of the mediation process to the
32 parents.
33

34 (C) The State shall maintain a list of individuals who are qualified mediators and
35 knowledgeable in laws and regulations relating to the provision of special education and
36 related services.
37

38 (D) The State shall bear the cost of the mediation process, including the costs of meetings
39 described in subparagraph (B).
40

41 (E) Each session in the mediation process shall be scheduled in a timely manner and shall
42 be held in a location that is convenient to the parties to the dispute.
43

44 (F) An agreement reached by the parties to the dispute in the mediation process shall be
45 set forth in a written mediation agreement.
46

47 (G) Discussions that occur during the mediation process shall be confidential and may not
48 be used as evidence in any subsequent due process hearings or civil proceedings and
49 the parties to the mediation process may be required to sign a confidentiality pledge
50 prior to the commencement of such process.
51

52 (f) IMPARTIAL DUE PROCESS HEARING.--
53

54 (1) IN GENERAL.--Whenever a complaint has been received under subsection (b)(6) or (k) of this
55 section, the parents involved in such complaint shall have an opportunity for an impartial due
56 process hearing, which shall be conducted by the State educational agency or by the local
57 educational agency, as determined by State law or by the State educational agency.
58

59 (2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.--
60

- 1 (A) IN GENERAL.--At least 5 business days prior to a hearing conducted pursuant to
2 paragraph (1), each party shall disclose to all other parties all evaluations completed by
3 that date and recommendations based on the offering party's evaluations that the party
4 intends to use at the hearing.
5
6 (B) FAILURE TO DISCLOSE.--A hearing officer may bar any party that fails to comply with
7 subparagraph (A) from introducing the relevant evaluation or recommendation at the
8 hearing without the consent of the other party.
9
10 (3) LIMITATION ON CONDUCT OF HEARING.--A hearing conducted pursuant to paragraph (1)
11 may not be conducted by an employee of the State educational agency or the local
12 educational agency involved in the education or care of the child.
13
14 (g) APPEAL.--If the hearing required by subsection (f) is conducted by a local educational agency, any
15 party aggrieved by the findings and decision rendered in such a hearing may appeal such findings
16 and decision to the State educational agency. Such agency shall conduct an impartial review of
17 such decision. The officer conducting such review shall make an independent decision upon
18 completion of such review.
19
20 (h) SAFEGUARDS.--Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal
21 conducted pursuant to subsection (g), shall be accorded--
22
23 (1) the right to be accompanied and advised by counsel and by individuals with special
24 knowledge or training with respect to the problems of children with disabilities;
25
26 (2) the right to present evidence and confront, cross-examine, and compel the attendance of
27 witnesses;
28
29 (3) the right to a written, or, at the option of the parents, electronic verbatim record of such
30 hearing; and
31
32 (4) the right to written, or, at the option of the parents, electronic findings of fact and decisions
33 (which findings and decisions shall be made available to the public consistent with the
34 requirements of section 617(c) (relating to the confidentiality of data, information, and
35 records) and shall also be transmitted to the advisory panel established pursuant to section
36 612(a)(21)).
37
38 (i) ADMINISTRATIVE PROCEDURES.--
39
40 (1) IN GENERAL.--
41
42 (A) DECISION MADE IN HEARING.--A decision made in a hearing conducted pursuant to
43 subsection (f) or (k) shall be final, except that any party involved in such hearing may
44 appeal such decision under the provisions of subsection (g) and paragraph (2) of this
45 subsection.
46
47 (B) DECISION MADE AT APPEAL.--A decision made under subsection (g) shall be final,
48 except that any party may bring an action under paragraph (2) of this subsection.
49
50 (2) RIGHT TO BRING CIVIL ACTION.--
51
52 (A) IN GENERAL.--Any party aggrieved by the findings and decision made under
53 subsection (f) or (k) who does not have the right to an appeal under subsection (g), and
54 any party aggrieved by the findings and decision under this subsection, shall have the
55 right to bring a civil action with respect to the complaint presented pursuant to this
56 section, which action may be brought in any State court of competent jurisdiction or in a
57 district court of the United States without regard to the amount in controversy.
58
59 (B) ADDITIONAL REQUIREMENTS.--In any action brought under this paragraph, the court-
60
61 (i) shall receive the records of the administrative proceedings;
62

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.--

(A) IN GENERAL.--The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) AWARD OF ATTORNEYS' FEES.--In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.--Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.--

(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if--

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(II) the offer is not accepted within 10 days; and

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section.

(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.--Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.--Except as provided in subparagraph (G), whenever the court finds that--

(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7);

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.--The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.--Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.--

(1) AUTHORITY OF SCHOOL PERSONNEL.--

(A) School personnel under this section may order a change in the placement of a child with a disability--

(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and

(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if--

(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)--

(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

(2) AUTHORITY OF HEARING OFFICER.--A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer--

(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

(B) considers the appropriateness of the child's current placement;

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2
3 (C) considers whether the public agency has made reasonable efforts to minimize the risk
4 of harm in the child's current placement, including the use of supplementary aids and
5 services; and
6
7 (D) determines that the interim alternative educational setting meets the requirements of
8 paragraph (3)(B).
9

10
11 (3) DETERMINATION OF SETTING.--
12

- 13 (A) IN GENERAL.--The alternative educational setting described in paragraph (1)(A)(ii) shall
14 be determined by the IEP Team.
15
16 (B) ADDITIONAL REQUIREMENTS.--Any interim alternative educational setting in which a
17 child is placed under paragraph (1) or (2) shall--
18
19 (I) be selected so as to enable the child to continue to participate in the general
20 curriculum, although in another setting, and to continue to receive those services
21 and modifications, including those described in the child's current IEP, that will
22 enable the child to meet the goals set out in that IEP; and
23
24 (ii) include services and modifications designed to address the behavior described
25 in paragraph (1) or paragraph (2) so that it does not recur.
26

27 (4) MANIFESTATION DETERMINATION REVIEW.--
28

- 29 (A) IN GENERAL.--If a disciplinary action is contemplated as described in paragraph (1) or
30 paragraph (2) for a behavior of a child with a disability described in either of those
31 paragraphs, or if a disciplinary action involving a change of placement for more than 10
32 days is contemplated for a child with a disability who has engaged in other behavior that
33 violated any rule or code of conduct of the local educational agency that applies to all
34 children--
35
36 (i) not later than the date on which the decision to take that action is made, the
37 parents shall be notified of that decision and of all procedural safeguards
38 accorded under this section; and
39
40 (ii) immediately, if possible, but in no case later than 10 school days after the date on
41 which the decision to take that action is made, a review shall be conducted of the
42 relationship between the child's disability and the behavior subject to the
43 disciplinary action.
44
45 (B) INDIVIDUALS TO CARRY OUT REVIEW.--A review described in subparagraph (A) shall
46 be conducted by the IEP Team and other qualified personnel.
47
48 (C) CONDUCT OF REVIEW.--In carrying out a review described in subparagraph (A), the
49 IEP Team may determine that the behavior of the child was not a manifestation of such
50 child's disability only if the IEP Team--
51
52 (i) first considers, in terms of the behavior subject to disciplinary action, all relevant
53 information, including--
54
55 (I) evaluation and diagnostic results, including such results or other relevant
56 information supplied by the parents of the child;
57
58 (II) observations of the child; and
59
60 (III) the child's IEP and placement; and
61
62 (ii) then determines that--

- 1 (I) in relationship to the behavior subject to disciplinary action, the child's IEP
2 and placement were appropriate and the special education services,
3 supplementary aids and services, and behavior intervention strategies
4 were provided consistent with the child's IEP and placement;
5
6 (II) the child's disability did not impair the ability of the child to understand the
7 impact and consequences of the behavior subject to disciplinary action;
8 and
9
10 (III) the child's disability did not impair the ability of the child to control the
11 behavior subject to disciplinary action.
12
13 (5) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY.--
14
15 (A) IN GENERAL.--If the result of the review described in paragraph (4) is a determination,
16 consistent with paragraph (4)(C), that the behavior of the child with a disability was not a
17 manifestation of the child's disability, the relevant disciplinary procedures applicable to
18 children without disabilities may be applied to the child in the same manner in which
19 they would be applied to children without disabilities, except as provided in section
20 612(a)(1).
21
22 (B) ADDITIONAL REQUIREMENT.--If the public agency initiates disciplinary procedures
23 applicable to all children, the agency shall ensure that the special education and
24 disciplinary records of the child with a disability are transmitted for consideration by the
25 person or persons making the final determination regarding the disciplinary action.
26
27 (6) PARENT APPEAL.--
28
29 (A) IN GENERAL.--
30
31 (i) If the child's parent disagrees with a determination that the child's behavior was
32 not a manifestation of the child's disability or with any decision regarding
33 placement, the parent may request a hearing.
34
35 (ii) The State or local educational agency shall arrange for an expedited hearing in
36 any case described in this subsection when requested by a parent.
37
38 (C) REVIEW OF DECISION.--
39
40 (i) In reviewing a decision with respect to the manifestation determination, the
41 hearing officer shall determine whether the public agency has demonstrated that
42 the child's behavior was not a manifestation of such child's disability consistent
43 with the requirements of paragraph (4)(C).
44
45 (ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim
46 alternative educational setting, the hearing officer shall apply the standards set
47 out in paragraph (2).
48
49 (7) PLACEMENT DURING APPEALS.--
50
51 (A) IN GENERAL.--When a parent requests a hearing regarding a disciplinary action
52 described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative
53 educational setting or the manifestation determination, the child shall remain in the
54 interim alternative educational setting pending the decision of the hearing officer or
55 until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2),
56 whichever occurs first, unless the parent and the State or local educational agency
57 agree otherwise.
58

1 (B) CURRENT PLACEMENT.--If a child is placed in an interim alternative educational setting
2 pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to
3 change the child's placement after expiration of the interim alternative placement,
4 during the pendency of any proceeding to challenge the proposed change in
5 placement, the child shall remain in the current placement (the child's placement prior to
6 the interim alternative educational setting), except as provided in subparagraph (C).
7

8 (C) EXPEDITED HEARING.--
9

10 (i) If school personnel maintain that it is dangerous for the child to be in the current
11 placement (placement prior to removal to the interim alternative education setting)
12 during the pendency of the due process proceedings, the local educational
13 agency may request an expedited hearing.
14

15 (ii) In determining whether the child may be placed in the alternative educational
16 setting or in another appropriate placement ordered by the hearing officer, the
17 hearing officer shall apply the standards set out in paragraph (2).
18

19 (8) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND
20 RELATED SERVICES.--
21

22 (A) IN GENERAL.--A child who has not been determined to be eligible for special education
23 and related services under this part and who has engaged in behavior that violated any
24 rule or code of conduct of the local educational agency, including any behavior
25 described in paragraph (1), may assert any of the protections provided for in this part if
26 the local educational agency had knowledge (as determined in accordance with this
27 paragraph) that the child was a child with a disability before the behavior that precipitated
28 the disciplinary action occurred.
29

30 (B) BASIS OF KNOWLEDGE.--A local educational agency shall be deemed to have
31 knowledge that a child is a child with a disability if--
32

33 (i) the parent of the child has expressed concern in writing (unless the parent is
34 illiterate or has a disability that prevents compliance with the requirements
35 contained in this clause) to personnel of the appropriate educational agency that
36 the child is in need of special education and related services;
37

38 (ii) the behavior or performance of the child demonstrates the need for such
39 services;
40

41 (iii) the parent of the child has requested an evaluation of the child pursuant to
42 section 614; or
43

44 (iv) the teacher of the child, or other personnel of the local educational agency, has
45 expressed concern about the behavior or performance of the child to the director
46 of special education of such agency or to other personnel of the agency.
47

48 (C) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.--
49

50 (i) In general.--If a local educational agency does not have knowledge that a child is a
51 child with a disability (in accordance with subparagraph (B)) prior to taking
52 disciplinary measures against the child, the child may be subjected to the same
53 disciplinary measures as measures applied to children without disabilities who
54 engaged in comparable behaviors consistent with clause (ii).
55

- (ii) Limitations.--If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(9) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.--

- (A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
- (B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(10) DEFINITIONS.--For purposes of this subsection, the following definitions apply:

- (A) CONTROLLED SUBSTANCE.--The term 'controlled substance' means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- (B) ILLEGAL DRUG.--The term 'illegal drug'--
- (i) means a controlled substance; but
- (ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
- (C) SUBSTANTIAL EVIDENCE- The term 'substantial evidence' means beyond a preponderance of the evidence.
- (D) WEAPON.--The term 'weapon' has the meaning given the term 'dangerous weapon' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

- (l) RULE OF CONSTRUCTION.--Nothing in this part shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.--

- (1) IN GENERAL.--A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)--
- (A) the public agency shall provide any notice required by this section to both the individual and the parents;
- (B) all other rights accorded to parents under this part transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

- (2) SPECIAL RULE.--If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

SEC. 616. WITHHOLDING AND JUDICIAL REVIEW.

(a) WITHHOLDING OF PAYMENTS.--

- (1) IN GENERAL.--Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or State agency affected by any failure described in subparagraph (B)), finds--

(A) that there has been a failure by the State to comply substantially with any provision of this part; or

(B) that there is a failure to comply with any condition of a local education agency's or State agency's eligibility under this part, including the terms of any agreement to achieve compliance with this part within the timelines specified in the agreement;

the Secretary shall, after notifying the State educational agency, withhold, in whole or in part, any further payments to the State under this part, or refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

- (2) NATURE OF WITHHOLDING.--If the Secretary withholds further payments under paragraph (1), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in subparagraph (A) or (B) of paragraph (1), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (1) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

(b) JUDICIAL REVIEW.--

- (1) IN GENERAL.--If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

- (2) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.--Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(3) STANDARD OF REVIEW.--The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) DIVIDED STATE AGENCY RESPONSIBILITY.--For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except--

(1) any reduction or withholding of payments to the State is proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

SEC. 617. ADMINISTRATION.

(a) RESPONSIBILITIES OF SECRETARY.--In carrying out this part, the Secretary shall--

(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, the State in matters relating to--

(A) the education of children with disabilities; and

(B) carrying out this part; and

(2) provide short-term training programs and institutes.

(b) RULES AND REGULATIONS.--In carrying out the provisions of this part, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

(c) CONFIDENTIALITY.--The Secretary shall take appropriate action, in accordance with the provisions of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part.

(d) PERSONNEL.--The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) and under sections 618, 661 and 673 (or their predecessor authorities through October 1, 1997) without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than twenty such personnel shall be employed at any time.

SEC. 618. PROGRAM INFORMATION.

(a) IN GENERAL.--Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary--

(1)(A) on--

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- (i) the number of children with disabilities, by race, ethnicity, and disability category, who are receiving a free appropriate public education;
 - (ii) the number of children with disabilities, by race and ethnicity, who are receiving early intervention services;
 - (iii) the number of children with disabilities, by race, ethnicity, and disability category, who are participating in regular education;
 - (iv) the number of children with disabilities, by race, ethnicity, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;
 - (v) the number of children with disabilities, by race, ethnicity, and disability category, who, for each year of age from age 14 to 21, stopped receiving special education and related services because of program completion or other reasons and the reasons why those children stopped receiving special education and related services;
 - (vi) the number of children with disabilities, by race and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and
 - (vii) (I) the number of children with disabilities, by race, ethnicity, and disability category, who under subparagraphs (A)(ii) and (B) of section 615(k)(1), are removed to an interim alternative educational setting;
 - (II) the acts or items precipitating those removals; and
 - (III) the number of children with disabilities who are subject to long-term suspensions or expulsions; and
 - (B) on the number of infants and toddlers, by race and ethnicity, who are at risk of having substantial developmental delays (as described in section 632), and who are receiving early intervention services under part C; and
 - (2) on any other information that may be required by the Secretary.
 - (b) **SAMPLING.**--The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.
 - (c) **DISPROPORTIONALITY.**--
 - (1) **IN GENERAL.**--Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to--
 - (A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3); and
 - (B) the placement in particular educational settings of such children.
 - (2) **REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.**--In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

SEC. 619. PRESCHOOL GRANTS.

- (a) IN GENERAL.--The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part--
- (1) to children with disabilities aged 3 to 5, inclusive; and
 - (2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.
- (b) ELIGIBILITY.--A State shall be eligible for a grant under this section if such State--
- (1) is eligible under section 612 to receive a grant under this part; and
 - (2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.
- (c) ALLOCATIONS TO STATES--
- (1) IN GENERAL.--After reserving funds for studies and evaluations under section 674(e), the Secretary shall allocate the remaining amount among the States in accordance with paragraph (2) or (3), as the case may be.
 - (2) INCREASE IN FUNDS.--If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:
 - (A) (i) Except as provided in subparagraph (B), the Secretary shall--
 - (I) allocate to each State the amount it received for fiscal year 1997;
 - (II) allocate 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5; and
 - (III) allocate 15 percent of those remaining funds to States on the basis of their relative populations of all children aged 3 through 5 who are living in poverty.
 - (ii) For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.
 - (B) Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:
 - (i) No State's allocation shall be less than its allocation for the preceding fiscal year.
 - (ii) No State's allocation shall be less than the greatest of--
 - (I) the sum of--
 - (aa) the amount it received for fiscal year 1997; and
 - (bb) one third of one percent of the amount by which the amount appropriated under subsection (j) exceeds the amount appropriated under this section for fiscal year 1997;
 - (II) the sum of--
 - (aa) the amount it received for the preceding fiscal year; and

- (bb) that amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or
- (III) the sum of--
- (aa) the amount it received for the preceding fiscal year; and
- (bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.
- (iii) Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of--
- (I) the amount it received for the preceding fiscal year; and
- (II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.
- (C) If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).
- (3) DECREASE IN FUNDS. If the amount available for allocations to States under paragraph (1) is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:
- (A) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of--
- (i) the amount it received for fiscal year 1997; and
- (ii) an amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.
- (B) (i) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount it received for that year, ratably reduced, if necessary.
- (4) OUTLYING AREAS. The Secretary shall increase the fiscal year 1998 allotment of each outlying area under section 611 by at least the amount that that area received under this section for fiscal year 1997.
- (d) RESERVATION FOR STATE ACTIVITIES.--
- (1) IN GENERAL.--Each State may retain not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).
- (2) AMOUNT DESCRIBED.--For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of--
- (A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or
- (B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

1 (e) STATE ADMINISTRATION.--

2
3 (1) IN GENERAL.--For the purpose of administering this section (including the coordination of
4 activities under this part with, and providing technical assistance to, other programs that
5 provide services to children with disabilities) a State may use not more than 20 percent of the
6 maximum amount it may retain under subsection (d) for any fiscal year.

7
8 (2) ADMINISTRATION OF PART C.--Funds described in paragraph (1) may also be used for the
9 administration of part C of this Act, if the State educational agency is the lead agency for the
10 State under that part.

11
12 (f) OTHER STATE-LEVEL ACTIVITIES.--Each State shall use any funds it retains under subsection (d)
13 and does not use for administration under subsection (e)--

14
15 (1) for support services (including establishing and implementing the mediation process required
16 by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5
17 as long as those services also benefit children with disabilities aged 3 through 5;

18
19 (2) for direct services for children eligible for services under this section;

20
21 (3) to develop a State improvement plan under subpart 1 of part D;

22
23 (4) for activities at the State and local levels to meet the performance goals established by the
24 State under section 612(a)(16) and to support implementation of the State improvement plan
25 under subpart 1 of part D if the State receives funds under that subpart; or

26
27 (5) to supplement other funds used to develop and implement a Statewide coordinated services
28 system designed to improve results for children and families, including children with
29 disabilities and their families, but not to exceed one percent of the amount received by the
30 State under this section for a fiscal year.

31
32 (g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.--

33
34 (1) SUBGRANTS REQUIRED. Each State that receives a grant under this section for any fiscal
35 year shall distribute any of the grant funds that it does not reserve under subsection (d) to
36 local educational agencies in the State that have established their eligibility under section
37 613, as follows:

38
39 (A) BASE PAYMENTS. The State shall first award each agency described in paragraph (1)
40 the amount that agency would have received under this section for fiscal year 1997 if
41 the State had distributed 75 percent of its grant for that year under section 619(c)(3), as
42 then in effect.

43
44 (B) ALLOCATION OF REMAINING FUNDS. After making allocations under subparagraph
45 (A), the State shall--

46
47 (i) allocate 85 percent of any remaining funds to those agencies on the basis of the
48 relative numbers of children enrolled in public and private elementary and
49 secondary schools within the agency's jurisdiction; and

50
51 (ii) allocate 15 percent of those remaining funds to those agencies in accordance
52 with their relative numbers of children living in poverty, as determined by the
53 State educational agency.

54
55 (2) REALLOCATION OF FUNDS. If a State educational agency determines that a local
56 educational agency is adequately providing a free appropriate public education to all children
57 with disabilities aged three through five residing in the area served by that agency with State
58 and local funds, the State educational agency may reallocate any portion of the funds under
59 this section that are not needed by that local agency to provide a free appropriate public
60 education to other local educational agencies in the State that are not adequately providing
61 special education and related services to all children with disabilities aged three through five
62 residing in the areas they serve.

- 1
2 (h) PART C INAPPLICABLE.--Part C of this Act does not apply to any child with a disability receiving a
3 free appropriate public education, in accordance with this part, with funds received under this
4 section.
5
6 (i) DEFINITION. For the purpose of this section, the term 'State' means each of the 50 States, the
7 District of Columbia, and the Commonwealth of Puerto Rico.
8
9 (j) AUTHORIZATION OF APPROPRIATIONS.--For the purpose of carrying out this section, there are
10 authorized to be appropriated to the Secretary \$500,000,000 for fiscal year 1998 and such sums as
11 may be necessary for each subsequent fiscal year.
12

13 **PART C--INFANTS AND TODDLERS WITH DISABILITIES**
14

15 **SEC. 631. FINDINGS AND POLICY.**
16

- 17 (a) FINDINGS.--The Congress finds that there is an urgent and substantial need--
18
19 (1) to enhance the development of infants and toddlers with disabilities and to minimize their
20 potential for developmental delay;
21
22 (2) to reduce the educational costs to our society, including our Nation's schools, by minimizing
23 the need for special education and related services after infants and toddlers with disabilities
24 reach school age;
25
26 (3) to minimize the likelihood of institutionalization of individuals with disabilities and maximize the
27 potential for their independently living in society;
28
29 (4) to enhance the capacity of families to meet the special needs of their infants and toddlers with
30 disabilities; and
31
32 (5) to enhance the capacity of State and local agencies and service providers to identify,
33 evaluate, and meet the needs of historically underrepresented populations, particularly
34 minority, low-income, inner-city, and rural populations.
35
36 (b) POLICY.--It is therefore the policy of the United States to provide financial assistance to States--
37
38 (1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary,
39 interagency system that provides early intervention services for infants and toddlers with
40 disabilities and their families;
41
42 (2) to facilitate the coordination of payment for early intervention services from Federal, State,
43 local, and private sources (including public and private insurance coverage);
44
45 (3) to enhance their capacity to provide quality early intervention services and expand and
46 improve existing early intervention services being provided to infants and toddlers with
47 disabilities and their families; and
48
49 (4) to encourage States to expand opportunities for children under 3 years of age who would be
50 at risk of having substantial developmental delay if they did not receive early intervention
51 services.
52

53 **SEC. 632. DEFINITIONS.**
54

55 As used in this part:
56

- 57 (1) AT-RISK INFANT OR TODDLER.--The term 'at-risk infant or toddler' means an individual
58 under 3 years of age who would be at risk of experiencing a substantial developmental delay if
59 early intervention services were not provided to the individual.
60
61 (2) COUNCIL.--The term 'council' means a State interagency coordinating council established
62 under section 641.

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- (3) DEVELOPMENTAL DELAY.--The term `developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).
 - (4) EARLY INTERVENTION SERVICES.--The term `early intervention services' means developmental services which--
 - (A) are provided under public supervision;
 - (B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;
 - (C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas--
 - (i) physical development;
 - (ii) cognitive development;
 - (iii) communication development;
 - (iv) social or emotional development; or
 - (v) adaptive development;
 - (D) meet the standards of the State in which they are provided, including the requirements of this part;
 - (E) include--
 - (i) family training, counseling, and home visits;
 - (ii) special instruction;
 - (iii) speech-language pathology and audiology services;
 - (iv) occupational therapy;
 - (v) physical therapy;
 - (vi) psychological services;
 - (vii) service coordination services;
 - (viii) medical services only for diagnostic or evaluation purposes;
 - (ix) early identification, screening, and assessment services;
 - (x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;
 - (xi) social work services;
 - (xii) vision services;
 - (xiii) assistive technology devices and assistive technology services; and
 - (xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

- 1 (F) are provided by qualified personnel, including--
2
3 (i) special educators;
4
5 (ii) speech-language pathologists and audiologists;
6
7 (iii) occupational therapists;
8
9 (iv) physical therapists;
10
11 (v) psychologists;
12
13 (vi) social workers;
14
15 (vii) nurses;
16
17 (viii) nutritionists;
18
19 (ix) family therapists;
20
21 (x) orientation and mobility specialists; and
22
23 (xi) pediatricians and other physicians;
24
25 (G) to the maximum extent appropriate, are provided in natural environments, including the
26 home, and community settings in which children without disabilities participate; and
27
28 (H) are provided in conformity with an individualized family service plan adopted in
29 accordance with section 636.
30
31 (5) INFANT OR TODDLER WITH A DISABILITY.--The term 'infant or toddler with a disability'--
32
33 (A) means an individual under 3 years of age who needs early intervention services
34 because the individual--
35
36 (i) is experiencing developmental delays, as measured by appropriate diagnostic
37 instruments and procedures in one or more of the areas of cognitive
38 development, physical development, communication development, social or
39 emotional development, and adaptive development; or
40
41 (ii) has a diagnosed physical or mental condition which has a high probability of
42 resulting in developmental delay; and
43
44 (B) may also include, at a State's discretion, at-risk infants and toddlers.
45

46 **SEC. 633. GENERAL AUTHORITY.**

47
48 The Secretary shall, in accordance with this part, make grants to States (from their allocations under
49 section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated,
50 multidisciplinary, interagency system to provide early intervention services for infants and toddlers with
51 disabilities and their families.
52

53 **SEC. 634. ELIGIBILITY.**

54
55 In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the
56 State--
57

- 58 (1) has adopted a policy that appropriate early intervention services are available to all infants and
59 toddlers with disabilities in the State and their families, including Indian infants and toddlers
60 with disabilities and their families residing on a reservation geographically located in the State;
61 and
62

- 1 (2) has in effect a statewide system that meets the requirements of section 635.
2

3 **SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**
4

- 5 (a) IN GENERAL.--A statewide system described in section 633 shall include, at a minimum, the
6 following components:
7

- 8 (1) A definition of the term 'developmental delay' that will be used by the State in carrying out
9 programs under this part.
10
11 (2) A State policy that is in effect and that ensures that appropriate early intervention services are
12 available to all infants and toddlers with disabilities and their families, including Indian infants
13 and toddlers and their families residing on a reservation geographically located in the State.
14
15 (3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or
16 toddler with a disability in the State, and a family-directed identification of the needs of each
17 family of such an infant or toddler, to appropriately assist in the development of the infant or
18 toddler.
19
20 (4) For each infant or toddler with a disability in the State, an individualized family service plan in
21 accordance with section 636, including service coordination services in accordance with such
22 service plan.
23
24 (5) A comprehensive child find system, consistent with part B, including a system for making
25 referrals to service providers that includes timelines and provides for participation by primary
26 referral sources.
27
28 (6) A public awareness program focusing on early identification of infants and toddlers with
29 disabilities, including the preparation and dissemination by the lead agency designated or
30 established under paragraph (10) to all primary referral sources, especially hospitals and
31 physicians, of information for parents on the availability of early intervention services, and
32 procedures for determining the extent to which such sources disseminate such information to
33 parents of infants and toddlers.
34
35 (7) A central directory which includes information on early intervention services, resources, and
36 experts available in the State and research and demonstration projects being conducted in
37 the State.
38
39 (8) A comprehensive system of personnel development, including the training of
40 paraprofessionals and the training of primary referral sources respecting the basic
41 components of early intervention services available in the State, that is consistent with the
42 comprehensive system of personnel development described in section 612(a)(14) and may
43 include--
44
45 (A) implementing innovative strategies and activities for the recruitment and retention of
46 early education service providers;
47
48 (B) promoting the preparation of early intervention providers who are fully and appropriately
49 qualified to provide early intervention services under this part;
50
51 (C) training personnel to work in rural and inner-city areas; and
52
53 (D) training personnel to coordinate transition services for infants and toddlers served
54 under this part from an early intervention program under this part to preschool or other
55 appropriate services.
56
57 (9) Subject to subsection (b), policies and procedures relating to the establishment and
58 maintenance of standards to ensure that personnel necessary to carry out this part are
59 appropriately and adequately prepared and trained, including--
60

1 (A) the establishment and maintenance of standards which are consistent with any State-
2 approved or recognized certification, licensing, registration, or other comparable
3 requirements which apply to the area in which such personnel are providing early
4 intervention services; and
5

6 (B) to the extent such standards are not based on the highest requirements in the State
7 applicable to a specific profession or discipline, the steps the State is taking to require
8 the retraining or hiring of personnel that meet appropriate professional requirements in
9 the State;
10

11 except that nothing in this part, including this paragraph, prohibits the use of
12 paraprofessionals and assistants who are appropriately trained and supervised, in accordance
13 with State law, regulations, or written policy, to assist in the provision of early intervention
14 services to infants and toddlers with disabilities under this part.
15

16 (10) A single line of responsibility in a lead agency designated or established by the Governor for
17 carrying out--
18

19 (A) the general administration and supervision of programs and activities receiving
20 assistance under section 633, and the monitoring of programs and activities used by
21 the State to carry out this part, whether or not such programs or activities are receiving
22 assistance made available under section 633, to ensure that the State complies with
23 this part;
24

25 (B) the identification and coordination of all available resources within the State from
26 Federal, State, local, and private sources;
27

28 (C) the assignment of financial responsibility in accordance with section 637(a)(2) to the
29 appropriate agencies;
30

31 (D) the development of procedures to ensure that services are provided to infants and
32 toddlers and their families under this part in a timely manner pending the resolution of
33 any disputes among public agencies or service providers;
34

35 (E) the resolution of intra- and interagency disputes; and
36

37 (F) the entry into formal interagency agreements that define the financial responsibility of
38 each agency for paying for early intervention services (consistent with State law) and
39 procedures for resolving disputes and that include all additional components necessary
40 to ensure meaningful cooperation and coordination.
41

42 (11) A policy pertaining to the contracting or making of other arrangements with service providers
43 to provide early intervention services in the State, consistent with the provisions of this part,
44 including the contents of the application used and the conditions of the contract or other
45 arrangements.
46

47 (12) A procedure for securing timely reimbursements of funds used under this part in accordance
48 with section 640(a).
49

50 (13) Procedural safeguards with respect to programs under this part, as required by section 639.
51

52 (14) A system for compiling data requested by the Secretary under section 618 that relates to this
53 part.
54

55 (15) A State interagency coordinating council that meets the requirements of section 641.
56

57 (16) policies and procedures to ensure that, consistent with section 636(d)(5)--
58

59 (A) to the maximum extent appropriate, early intervention services are provided in natural
60 environments; and
61

(B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

- (b) POLICY.--In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9) within 3 years.

SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

- (a) ASSESSMENT AND PROGRAM DEVELOPMENT.--A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive--
- (1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;
 - (2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and
 - (3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e).
- (b) PERIODIC REVIEW.--The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).
- (c) PROMPTNESS AFTER ASSESSMENT.--The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.
- (d) CONTENT OF PLAN.--The individualized family service plan shall be in writing and contain--
- (1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;
 - (2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;
 - (3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;
 - (4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;
 - (5) a statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;
 - (6) the projected dates for initiation of services and the anticipated duration of the services;

- 1 (7) the identification of the service coordinator from the profession most immediately relevant to
2 the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all
3 applicable responsibilities under this part) who will be responsible for the implementation of
4 the plan and coordination with other agencies and persons; and
5
6 (8) the steps to be taken to support the transition of the toddler with a disability to preschool or
7 other appropriate services.
8
9 (e) PARENTAL CONSENT.--The contents of the individualized family service plan shall be fully
10 explained to the parents and informed written consent from the parents shall be obtained prior to
11 the provision of early intervention services described in such plan. If the parents do not provide
12 consent with respect to a particular early intervention service, then the early intervention services to
13 which consent is obtained shall be provided.
14

15 **SEC. 637. STATE APPLICATION AND ASSURANCES.**
16

- 17 (a) APPLICATION.--A State desiring to receive a grant under section 633 shall submit an application to
18 the Secretary at such time and in such manner as the Secretary may reasonably require. The
19 application shall contain--
20
21 (1) a designation of the lead agency in the State that will be responsible for the administration of
22 funds provided under section 633;
23
24 (2) a designation of an individual or entity responsible for assigning financial responsibility among
25 appropriate agencies;
26
27 (3) information demonstrating eligibility of the State under section 634, including--
28
29 (A) information demonstrating to the Secretary's satisfaction that the State has in effect the
30 statewide system required by section 633; and
31
32 (B) a description of services to be provided to infants and toddlers with disabilities and their
33 families through the system;
34
35 (4) if the State provides services to at-risk infants and toddlers through the system, a description
36 of such services;
37
38 (5) a description of the uses for which funds will be expended in accordance with this part;
39
40 (6) a description of the procedure used to ensure that resources are made available under this
41 part for all geographic areas within the State;
42
43 (7) a description of State policies and procedures that ensure that, prior to the adoption by the
44 State of any other policy or procedure necessary to meet the requirements of this part, there
45 are public hearings, adequate notice of the hearings, and an opportunity for comment
46 available to the general public, including individuals with disabilities and parents of infants and
47 toddlers with disabilities;
48
49 (8) a description of the policies and procedures to be used--
50
51 (A) to ensure a smooth transition for toddlers receiving early intervention services under
52 this part to preschool or other appropriate services, including a description of how--
53
54 (i) the families of such toddlers will be included in the transition plans required by
55 subparagraph (C); and
56
57 (ii) the lead agency designated or established under section 635(a)(10) will--
58
59 (I) notify the local educational agency for the area in which such a child resides
60 that the child will shortly reach the age of eligibility for preschool services
61 under part B, as determined in accordance with State law;
62

- 1 (II) in the case of a child who may be eligible for such preschool services, with
2 the approval of the family of the child, convene a conference among the
3 lead agency, the family, and the local educational agency at least 90 days
4 (and at the discretion of all such parties, up to 6 months) before the child is
5 eligible for the preschool services, to discuss any such services that the
6 child may receive; and
7
8 (III) in the case of a child who may not be eligible for such preschool services,
9 with the approval of the family, make reasonable efforts to convene a
10 conference among the lead agency, the family, and providers of other
11 appropriate services for children who are not eligible for preschool services
12 under part B, to discuss the appropriate services that the child may receive;
13
14 (B) to review the child's program options for the period from the child's third birthday
15 through the remainder of the school year; and
16
17 (C) to establish a transition plan; and
18
19 (9) such other information and assurances as the Secretary may reasonably require.
20
21 (b) ASSURANCES.--The application described in subsection (a)--
22
23 (1) shall provide satisfactory assurance that Federal funds made available under section 643 to
24 the State will be expended in accordance with this part;
25
26 (2) shall contain an assurance that the State will comply with the requirements of section 640;
27
28 (3) shall provide satisfactory assurance that the control of funds provided under section 643, and
29 title to property derived from those funds, will be in a public agency for the uses and purposes
30 provided in this part and that a public agency will administer such funds and property;
31
32 (4) shall provide for--
33
34 (A) making such reports in such form and containing such information as the Secretary may
35 require to carry out the Secretary's functions under this part; and
36
37 (B) keeping such records and affording such access to them as the Secretary may find
38 necessary to ensure the correctness and verification of those reports and proper
39 disbursement of Federal funds under this part;
40
41 (5) provide satisfactory assurance that Federal funds made available under section 643 to the
42 State--
43
44 (A) will not be commingled with State funds; and
45
46 (B) will be used so as to supplement the level of State and local funds expended for infants
47 and toddlers with disabilities and their families and in no case to supplant those State
48 and local funds;
49
50 (6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures
51 will be adopted as may be necessary to ensure proper disbursement of, and accounting for,
52 Federal funds paid under section 643 to the State;
53
54 (7) shall provide satisfactory assurance that policies and procedures have been adopted to
55 ensure meaningful involvement of underserved groups, including minority, low-income, and
56 rural families, in the planning and implementation of all the requirements of this part; and
57
58 (8) shall contain such other information and assurances as the Secretary may reasonably require
59 by regulation.
60

- 1 (c) STANDARD FOR DISAPPROVAL OF APPLICATION.--The Secretary may not disapprove such an
2 application unless the Secretary determines, after notice and opportunity for a hearing, that the
3 application fails to comply with the requirements of this section.
4
- 5 (d) SUBSEQUENT STATE APPLICATION.--If a State has on file with the Secretary a policy, procedure,
6 or assurance that demonstrates that the State meets a requirement of this section, including any
7 policy or procedure filed under part H (as in effect before July 1, 1998), the Secretary shall consider
8 the State to have met the requirement for purposes of receiving a grant under this part.
9
- 10 (e) MODIFICATION OF APPLICATION.--An application submitted by a State in accordance with this
11 section shall remain in effect until the State submits to the Secretary such modifications as the State
12 determines necessary. This section shall apply to a modification of an application to the same extent
13 and in the same manner as this section applies to the original application.
14
- 15 (f) MODIFICATIONS REQUIRED BY THE SECRETARY.--The Secretary may require a State to modify
16 its application under this section, but only to the extent necessary to ensure the State's compliance
17 with this part, if--
18
- 19 (1) an amendment is made to this Act, or a Federal regulation issued under this Act;
20
21 (2) a new interpretation of this Act is made by a Federal court; or
22
23 (3) an official finding of noncompliance with Federal law or regulations is made with respect to the
24 State.
25

26 **SEC. 638. USES OF FUNDS.**

27
28 In addition to using funds provided under section 633 to maintain and implement the statewide system
29 required by such section, a State may use such funds--
30

- 31 (1) for direct early intervention services for infants and toddlers with disabilities, and their families,
32 under this part that are not otherwise funded through other public or private sources;
33
34 (2) to expand and improve on services for infants and toddlers and their families under this part
35 that are otherwise available;
36
37 (3) to provide a free appropriate public education, in accordance with part B, to children with
38 disabilities from their third birthday to the beginning of the following school year; and
39
40 (4) in any State that does not provide services for at-risk infants and toddlers under section
41 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving
42 collaborative efforts related to at-risk infants and toddlers, including establishing linkages with
43 appropriate public or private community-based organizations, services, and personnel for the
44 purposes of--
45
- 46 (A) identifying and evaluating at-risk infants and toddlers;
47
48 (B) making referrals of the infants and toddlers identified and evaluated under
49 subparagraph (A); and
50
51 (C) conducting periodic follow-up on each such referral to determine if the status of the
52 infant or toddler involved has changed with respect to the eligibility of the infant or
53 toddler for services under this part.
54

55 **SEC. 639. PROCEDURAL SAFEGUARDS.**

- 56
57 (a) MINIMUM PROCEDURES.--The procedural safeguards required to be included in a statewide
58 system under section 635(a)(13) shall provide, at a minimum, the following:
59

- (1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.
- (2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.
- (3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.
- (4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.
- (5) Procedures to protect the rights of the infant or toddler whenever the parents of the child are not known or cannot be found or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.
- (6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.
- (7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.
- (8) The right of parents to use mediation in accordance with section 615(e), except that--
 - (A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);
 - (B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and
 - (C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.
- (b) **SERVICES DURING PENDENCY OF PROCEEDINGS.**--During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

1 **SEC. 640. PAYOR OF LAST RESORT.**

- 2
- 3 (a) NONSUBSTITUTION.--Funds provided under section 643 may not be used to satisfy a financial
- 4 commitment for services that would have been paid for from another public or private source,
- 5 including any medical program administered by the Secretary of Defense, but for the enactment of
- 6 this part, except that whenever considered necessary to prevent a delay in the receipt of
- 7 appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds
- 8 provided under section 643 may be used to pay the provider of services pending reimbursement
- 9 from the agency that has ultimate responsibility for the payment.
- 10
- 11 (b) REDUCTION OF OTHER BENEFITS.--Nothing in this part shall be construed to permit the State to
- 12 reduce medical or other assistance available or to alter eligibility under title V of the Social Security
- 13 Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid
- 14 for infants or toddlers with disabilities) within the State.

15

16 **SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

17

18 (a) ESTABLISHMENT.--

- 19
- 20 (1) IN GENERAL.--A State that desires to receive financial assistance under this part shall
- 21 establish a State interagency coordinating council.
- 22
- 23 (2) APPOINTMENT.--The council shall be appointed by the Governor. In making appointments to
- 24 the council, the Governor shall ensure that the membership of the council reasonably
- 25 represents the population of the State.
- 26
- 27 (3) CHAIRPERSON.--The Governor shall designate a member of the council to serve as the
- 28 chairperson of the council, or shall require the council to so designate such a member. Any
- 29 member of the council who is a representative of the lead agency designated under section
- 30 635(a)(10) may not serve as the chairperson of the council.

31

32 (b) COMPOSITION.--

- 33
- 34 (1) IN GENERAL.--The council shall be composed as follows:
- 35
- 36 (A) PARENTS.--At least 20 percent of the members shall be parents of infants or toddlers
- 37 with disabilities or children with disabilities aged 12 or younger, with knowledge of, or
- 38 experience with, programs for infants and toddlers with disabilities. At least one such
- 39 member shall be a parent of an infant or toddler with a disability or a child with a disability
- 40 aged 6 or younger.
- 41
- 42 (B) SERVICE PROVIDERS.--At least 20 percent of the members shall be public or private
- 43 providers of early intervention services.
- 44
- 45 (C) STATE LEGISLATURE.--At least one member shall be from the State legislature.
- 46
- 47 (D) PERSONNEL PREPARATION.--At least one member shall be involved in personnel
- 48 preparation.
- 49
- 50 (E) AGENCY FOR EARLY INTERVENTION SERVICES.--At least one member shall be from
- 51 each of the State agencies involved in the provision of, or payment for, early
- 52 intervention services to infants and toddlers with disabilities and their families and shall
- 53 have sufficient authority to engage in policy planning and implementation on behalf of
- 54 such agencies.
- 55
- 56 (F) AGENCY FOR PRESCHOOL SERVICES.--At least one member shall be from the State
- 57 educational agency responsible for preschool services to children with disabilities and
- 58 shall have sufficient authority to engage in policy planning and implementation on
- 59 behalf of such agency.
- 60
- 61 (G) AGENCY FOR HEALTH INSURANCE.--At least one member shall be from the agency
- 62 responsible for the State governance of health insurance.

- 1 (H) HEAD START AGENCY.--At least one representative from a Head Start agency or
2 program in the State.
- 3
- 4 (I) CHILD CARE AGENCY.--At least one representative from a State agency responsible
5 for child care.
- 6
- 7 (2) OTHER MEMBERS.--The council may include other members selected by the Governor,
8 including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated
9 or BIA-funded school, from the Indian Health Service or the tribe or tribal council.
- 10
- 11 (c) MEETINGS.--The council shall meet at least quarterly and in such places as it deems necessary. The
12 meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the
13 general public.
- 14
- 15 (d) MANAGEMENT AUTHORITY.--Subject to the approval of the Governor, the council may prepare
16 and approve a budget using funds under this part to conduct hearings and forums, to reimburse
17 members of the council for reasonable and necessary expenses for attending council meetings and
18 performing council duties (including child care for parent representatives), to pay compensation to a
19 member of the council if the member is not employed or must forfeit wages from other employment
20 when performing official council business, to hire staff, and to obtain the services of such
21 professional, technical, and clerical personnel as may be necessary to carry out its functions under
22 this part.
- 23
- 24 (e) FUNCTIONS OF COUNCIL.--
- 25
- 26 (1) DUTIES.--The council shall--
- 27
- 28 (A) advise and assist the lead agency designated or established under section 635(a)(10)
29 in the performance of the responsibilities set out in such section, particularly the
30 identification of the sources of fiscal and other support for services for early intervention
31 programs, assignment of financial responsibility to the appropriate agency, and the
32 promotion of the interagency agreements;
- 33
- 34 (B) advise and assist the lead agency in the preparation of applications and amendments
35 thereto;
- 36
- 37 (C) advise and assist the State educational agency regarding the transition of toddlers with
38 disabilities to preschool and other appropriate services; and
- 39
- 40 (D) prepare and submit an annual report to the Governor and to the Secretary on the status
41 of early intervention programs for infants and toddlers with disabilities and their families
42 operated within the State.
- 43
- 44 (2) AUTHORIZED ACTIVITY.--The council may advise and assist the lead agency and the State
45 educational agency regarding the provision of appropriate services for children from birth
46 through age 5. The council may advise appropriate agencies in the State with respect to the
47 integration of services for infants and toddlers with disabilities and at-risk infants and toddlers
48 and their families, regardless of whether at-risk infants and toddlers are eligible for early
49 intervention services in the State.
- 50
- 51 (f) CONFLICT OF INTEREST.--No member of the council shall cast a vote on any matter that would
52 provide direct financial benefit to that member or otherwise give the appearance of a conflict of
53 interest under State law.
- 54

55 **SEC. 642. FEDERAL ADMINISTRATION.**

56

57 Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program
58 authorized by this part, except that--

59

- 60 (1) any reference in such sections to a State educational agency shall be considered to be a
61 reference to a State's lead agency established or designated under section 635(a)(10);
- 62

- 1 (2) any reference in such sections to a local educational agency, educational service agency, or a
2 State agency shall be considered to be a reference to an early intervention service provider
3 under this part; and
4
5 (3) any reference to the education of children with disabilities or the education of all children with
6 disabilities shall be considered to be a reference to the provision of appropriate early
7 intervention services to infants and toddlers with disabilities.
8

9 **SEC. 643. ALLOCATION OF FUNDS.**

10
11 (a) RESERVATION OF FUNDS FOR TERRITORIES.--
12

- 13 (1) IN GENERAL.--From the sums appropriated to carry out this part for any fiscal year, the
14 Secretary may reserve up to one percent for payments to Guam, American Samoa, the Virgin
15 Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their
16 respective needs.
17
18 (2) CONSOLIDATION OF FUNDS.--The provisions of Public Law 95-134, permitting the
19 consolidation of grants to the outlying areas, shall not apply to funds those areas receive
20 under this part.
21

22 (b) PAYMENTS TO INDIANS.--
23

- 24 (1) IN GENERAL.--The Secretary shall, subject to this subsection, make payments to the
25 Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under
26 section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the
27 above entities for the coordination of assistance in the provision of early intervention services
28 by the States to infants and toddlers with disabilities and their families on reservations served
29 by elementary and secondary schools for Indian children operated or funded by the
30 Department of the Interior. The amount of such payment for any fiscal year shall be 1.25
31 percent of the aggregate of the amount available to all States under this part for such fiscal
32 year.
33
34 (2) ALLOCATION.--For each fiscal year, the Secretary of the Interior shall distribute the entire
35 payment received under paragraph (1) by providing to each tribe, tribal organization, or
36 consortium an amount based on the number of infants and toddlers residing on the
37 reservation as determined annually divided by the total of such children served by all tribes,
38 tribal organizations, or consortia.
39
40 (3) INFORMATION.--To receive a payment under this paragraph, the tribe, tribal organization, or
41 consortium shall submit such information to the Secretary of the Interior as is needed to
42 determine the amounts to be allocated under paragraph (2).
43
44 (4) USE OF FUNDS.--The funds received by a tribe, tribal organization, or consortium shall be
45 used to assist States in child-find, screening, and other procedures for the early identification
46 of Indian children under 3 years of age and for parent training. Such funds may also be used
47 to provide early intervention services in accordance with this part. Such activities may be
48 carried out directly or through contracts or cooperative agreements with the BIA, local
49 educational agencies, and other public or private nonprofit organizations. The tribe, tribal
50 organization, or consortium is encouraged to involve Indian parents in the development and
51 implementation of these activities. The above entities shall, as appropriate, make referrals to
52 local, State, or Federal entities for the provision of services or further diagnosis.
53
54 (5) REPORTS.--To be eligible to receive a grant under paragraph (2), a tribe, tribal organization,
55 or consortium shall make a biennial report to the Secretary of the Interior of activities
56 undertaken under this subsection, including the number of contracts and cooperative
57 agreements entered into, the number of children contacted and receiving services for each
58 year, and the estimated number of children needing services during the 2 years following the
59 year in which the report is made. The Secretary of the Interior shall include a summary of this
60 information on a biennial basis to the Secretary of Education along with such other information
61 as required under section 611(i)(3)(E). The Secretary of Education may require any additional
62 information from the Secretary of the Interior.

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- (6) PROHIBITED USES OF FUNDS.--None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.
- (c) STATE ALLOTMENTS.--
- (1) IN GENERAL.--Except as provided in paragraphs (2), (3), and (4), from the funds remaining for each fiscal year after the reservation and payments under subsections (a) and (b), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.
- (2) MINIMUM ALLOTMENTS.--Except as provided in paragraphs (3) and (4), no State shall receive an amount under this section for any fiscal year that is less than the greatest of--
- (A) one-half of one percent of the remaining amount described in paragraph (1); or
- (B) \$500,000.
- (3) SPECIAL RULE FOR 1998 AND 1999.--
- (A) IN GENERAL.--Except as provided in paragraph (4), no State may receive an amount under this section for either fiscal year 1998 or 1999 that is less than the sum of the amounts such State received for fiscal year 1994 under--
- (i) part H (as in effect for such fiscal year); and
- (ii) subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect on the day before the date of the enactment of the Improving America's Schools Act of 1994) for children with disabilities under 3 years of age.
- (B) EXCEPTION.--If, for fiscal year 1998 or 1999, the number of infants and toddlers in a State, as determined under paragraph (1), is less than the number of infants and toddlers so determined for fiscal year 1994, the amount determined under subparagraph (A) for the State shall be reduced by the same percentage by which the number of such infants and toddlers so declined.
- (4) RATABLE REDUCTION.--
- (A) IN GENERAL.--If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allocations to such States for such year.
- (B) ADDITIONAL FUNDS.--If additional funds become available for making payments under this subsection for a fiscal year, allocations that were reduced under subparagraph (A) shall be increased on the same basis they were reduced.
- (5) DEFINITIONS.--For the purpose of this subsection--
- (A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and
- (B) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.
- (d) REALLOTMENT OF FUNDS.--If a State elects not to receive its allotment under subsection (c), the Secretary shall reallocate, among the remaining States, amounts from such State in accordance with such subsection.

1 **SEC. 644. FEDERAL INTERAGENCY COORDINATING COUNCIL.**

2
3 (a) ESTABLISHMENT AND PURPOSE.--

- 4
5 (1) IN GENERAL.--The Secretary shall establish a Federal Interagency Coordinating Council in
6 order to--
7
8 (A) minimize duplication of programs and activities across Federal, State, and local
9 agencies, relating to--
10 (i) early intervention services for infants and toddlers with disabilities (including at-
11 risk infants and toddlers) and their families; and
12 (ii) preschool or other appropriate services for children with disabilities;
13
14 (B) ensure the effective coordination of Federal early intervention and preschool programs
15 and policies across Federal agencies;
16
17 (C) coordinate the provision of Federal technical assistance and support activities to States;
18
19 (D) identify gaps in Federal agency programs and services; and
20
21 (E) identify barriers to Federal interagency cooperation.
22
23 (2) APPOINTMENTS.--The council established under paragraph (1) (hereafter in this section
24 referred to as the Council) and the chairperson of the Council shall be appointed by the
25 Secretary in consultation with other appropriate Federal agencies. In making the
26 appointments, the Secretary shall ensure that each member has sufficient authority to
27 engage in policy planning and implementation on behalf of the department, agency, or
28 program that the member represents.
29
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31

32 (b) COMPOSITION.--The Council shall be composed of--

- 33
34 (1) a representative of the Office of Special Education Programs;
35
36 (2) a representative of the National Institute on Disability and Rehabilitation Research and a
37 representative of the Office of Educational Research and Improvement;
38
39 (3) a representative of the Maternal and Child Health Services Block Grant Program;
40
41 (4) a representative of programs administered under the Developmental Disabilities Assistance
42 and Bill of Rights Act;
43
44 (5) a representative of the Health Care Financing Administration;
45
46 (6) a representative of the Division of Birth Defects and Developmental Disabilities of the Centers
47 for Disease Control;
48
49 (7) a representative of the Social Security Administration;
50
51 (8) a representative of the special supplemental nutrition program for women, infants, and
52 children of the Department of Agriculture;
53
54 (9) a representative of the National Institute of Mental Health;
55
56 (10) a representative of the National Institute of Child Health and Human Development;
57
58 (11) a representative of the Bureau of Indian Affairs of the Department of the Interior;
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60 (12) a representative of the Indian Health Service;
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62 (13) a representative of the Surgeon General;

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- (14) a representative of the Department of Defense;
 - (15) a representative of the Children's Bureau, and a representative of the Head Start Bureau, of the Administration for Children and Families;
 - (16) a representative of the Substance Abuse and Mental Health Services Administration;
 - (17) a representative of the Pediatric AIDS Health Care Demonstration Program in the Public Health Service;
 - (18) parents of children with disabilities age 12 or under (who shall constitute at least 20 percent of the members of the Council), of whom at least one must have a child with a disability under the age of 6;
 - (19) at least 2 representatives of State lead agencies for early intervention services to infants and toddlers, one of whom must be a representative of a State educational agency and the other a representative of a non-educational agency;
 - (20) other members representing appropriate agencies involved in the provision of, or payment for, early intervention services and special education and related services to infants and toddlers with disabilities and their families and preschool children with disabilities; and
 - (21) other persons appointed by the Secretary.
- (c) MEETINGS.--The Council shall meet at least quarterly and in such places as the Council deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.
- (d) FUNCTIONS OF THE COUNCIL.--The Council shall--
- (1) advise and assist the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, and the Commissioner of Social Security in the performance of their responsibilities related to serving children from birth through age 5 who are eligible for services under this part or under part B;
 - (2) conduct policy analyses of Federal programs related to the provision of early intervention services and special educational and related services to infants and toddlers with disabilities and their families, and preschool children with disabilities, in order to determine areas of conflict, overlap, duplication, or inappropriate omission;
 - (3) identify strategies to address issues described in paragraph (2);
 - (4) develop and recommend joint policy memoranda concerning effective interagency collaboration, including modifications to regulations, and the elimination of barriers to interagency programs and activities;
 - (5) coordinate technical assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention programming for infants and toddlers with disabilities and their families and preschool children with disabilities; and
 - (6) facilitate activities in support of States' interagency coordination efforts.
- (e) CONFLICT OF INTEREST.--No member of the Council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under Federal law.
- (f) FEDERAL ADVISORY COMMITTEE ACT.--The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the establishment or operation of the Council.

1 **SEC. 645. AUTHORIZATION OF APPROPRIATIONS.**

2
3 For the purpose of carrying out this part, there are authorized to be appropriated \$400,000,000 for fiscal
4 year 1998 and such sums as may be necessary for each of the fiscal years 1999 through 2002.

5
6 **PART D-- NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH**
7 **DISABILITIES**

8
9 **SUBPART 1-- STATE PROGRAM IMPROVEMENT GRANTS FOR CHILDREN WITH**
10 **DISABILITIES**

11
12 **SEC. 651. FINDINGS AND PURPOSE.**

13
14 (a) FINDINGS.--The Congress finds the following:

- 15
16 (1) States are responding with some success to multiple pressures to improve educational and
17 transitional services and results for children with disabilities in response to growing demands
18 imposed by ever-changing factors, such as demographics, social policies, and labor and
19 economic markets.
- 20
21 (2) In order for States to address such demands and to facilitate lasting systemic change that is of
22 benefit to all students, including children with disabilities, States must involve local
23 educational agencies, parents, individuals with disabilities and their families, teachers and
24 other service providers, and other interested individuals and organizations in carrying out
25 comprehensive strategies to improve educational results for children with disabilities.
- 26
27 (3) Targeted Federal financial resources are needed to assist States, working in partnership with
28 others, to identify and make needed changes to address the needs of children with
29 disabilities into the next century.
- 30
31 (4) State educational agencies, in partnership with local educational agencies and other
32 individuals and organizations, are in the best position to identify and design ways to meet
33 emerging and expanding demands to improve education for children with disabilities and to
34 address their special needs.
- 35
36 (5) Research, demonstration, and practice over the past 20 years in special education and related
37 disciplines have built a foundation of knowledge on which State and local systemic-change
38 activities can now be based.
- 39
40 (6) Such research, demonstration, and practice in special education and related disciplines have
41 demonstrated that an effective educational system now and in the future must--
- 42
43 (A) maintain high academic standards and clear performance goals for children with
44 disabilities, consistent with the standards and expectations for all students in the
45 educational system, and provide for appropriate and effective strategies and methods
46 to ensure that students who are children with disabilities have maximum opportunities
47 to achieve those standards and goals;
- 48
49 (B) create a system that fully addresses the needs of all students, including children with
50 disabilities, by addressing the needs of children with disabilities in carrying out
51 educational reform activities;
- 52
53 (C) clearly define, in measurable terms, the school and post-school results that children
54 with disabilities are expected to achieve;
- 55
56 (D) promote service integration, and the coordination of State and local education, social,
57 health, mental health, and other services, in addressing the full range of student needs,
58 particularly the needs of children with disabilities who require significant levels of
59 support to maximize their participation and learning in school and the community;
- 60
61 (E) ensure that children with disabilities are provided assistance and support in making
62 transitions as described in section 674(b)(3)(C);

- 1 (F) promote comprehensive programs of professional development to ensure that the
2 persons responsible for the education or a transition of children with disabilities
3 possess the skills and knowledge necessary to address the educational and related
4 needs of those children;
5
6 (G) disseminate to teachers and other personnel serving children with disabilities research-
7 based knowledge about successful teaching practices and models and provide
8 technical assistance to local educational agencies and schools on how to improve
9 results for children with disabilities;
10
11 (H) create school-based disciplinary strategies that will be used to reduce or eliminate the
12 need to use suspension and expulsion as disciplinary options for children with
13 disabilities;
14
15 (I) establish placement-neutral funding formulas and cost-effective strategies for meeting
16 the needs of children with disabilities; and
17
18 (J) involve individuals with disabilities and parents of children with disabilities in planning,
19 implementing, and evaluating systemic-change activities and educational reforms.
20
21 (b) PURPOSE.--The purpose of this subpart is to assist State educational agencies, and their partners
22 referred to in section 652(b), in reforming and improving their systems for providing educational,
23 early intervention, and transitional services, including their systems for professional development,
24 technical assistance, and dissemination of knowledge about best practices, to improve results for
25 children with disabilities.
26

27 **SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.**

- 28
29 (a) ELIGIBLE APPLICANTS.--A State educational agency may apply for a grant under this subpart for a
30 grant period of not less than 1 year and not more than 5 years.
31
32 (b) PARTNERS.--
33
34 (1) REQUIRED PARTNERS.--
35
36 (A) CONTRACTUAL PARTNERS.--In order to be considered for a grant under this subpart,
37 a State educational agency shall establish a partnership with local educational agencies
38 and other State agencies involved in, or concerned with, the education of children with
39 disabilities.
40
41 (B) OTHER PARTNERS.--In order to be considered for a grant under this subpart, a State
42 educational agency shall work in partnership with other persons and organizations
43 involved in, and concerned with, the education of children with disabilities, including--
44
45 (i) the Governor;
46
47 (ii) parents of children with disabilities;
48
49 (iii) parents of nondisabled children;
50
51 (iv) individuals with disabilities;
52
53 (v) organizations representing individuals with disabilities and their parents, such as
54 parent training and information centers;
55
56 (vi) community-based and other nonprofit organizations involved in the education
57 and employment of individuals with disabilities;
58
59 (vii) the lead State agency for part C;
60
61 (viii) general and special education teachers;
62

- (ix) the State advisory panel established under part C;
- (x) the State interagency coordinating council established under part C; and
- (xi) institutions of higher education within the State.

(2) OPTIONAL PARTNERS.--A partnership under subparagraph (A) or (B) of paragraph (1) may also include--

- (A) individuals knowledgeable about vocational education;
- (B) the State agency for higher education;
- (C) the State vocational rehabilitation agency;
- (D) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and
- (E) other individuals.

SEC. 653. APPLICATIONS.

(a) IN GENERAL.--

- (1) SUBMISSION.--A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.
- (2) STATE IMPROVEMENT PLAN.-- The application shall include a State improvement plan that--
 - (A) is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, as appropriate; and
 - (B) meets the requirements of this section.

(b) DETERMINING CHILD AND PROGRAM NEEDS.--

- (1) IN GENERAL.--Each State improvement plan shall identify those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16).
- (2) REQUIRED ANALYSES.--To meet the requirement of paragraph (1), the State improvement plan shall include at least--
 - (A) an analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State, including--
 - (i) their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;
 - (ii) their participation in postsecondary education and employment; and
 - (iii) how their performance on the assessments and indicators described in clause (i) compares to that of non-disabled children;
 - (B) an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum--
 - (i) the number of personnel providing special education and related services; and

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2
3 (ii) relevant information on current and anticipated personnel vacancies and
4 shortages (including the number of individuals described in clause (i) with
5 temporary certification), and on the extent of certification or retraining necessary
6 to eliminate such shortages, that is based, to the maximum extent possible, on
7 existing assessments of personnel needs;
- 8 (C) an analysis of the major findings of the Secretary's most recent reviews of State compliance,
9 as they relate to improving results for children with disabilities; and
- 10
11 (D) an analysis of other information, reasonably available to the State, on the effectiveness of the
12 State's systems of early intervention, special education, and general education in meeting the
13 needs of children with disabilities.
- 14
15 (c) IMPROVEMENT STRATEGIES.--Each State improvement plan shall--
- 16
17 (1) describe a partnership agreement that--
- 18
19 (A) specifies--
- 20
21 (i) the nature and extent of the partnership among the State educational agency,
22 local educational agencies, and other State agencies involved in, or concerned
23 with, the education of children with disabilities, and the respective roles of each
24 member of the partnership; and
- 25
26 (ii) how such agencies will work in partnership with other persons and organizations
27 involved in, and concerned with, the education of children with disabilities,
28 including the respective roles of each of these persons; and
- 29
30 (B) is in effect for the period of the grant;
- 31
32 (2) describe how grant funds will be used in undertaking the systemic-change activities, and the
33 amount and nature of funds from any other sources, including part B funds retained for use at
34 the State level under sections 611 (f) and 619 (d), that will be committed to the systemic-
35 change activities;
- 36
37 (3) describe the strategies the State will use to address the needs identified under subsection
38 (b), including--
- 39
40 (A) how the State will change State policies and procedures to address systemic barriers to
41 improving results for children with disabilities;
- 42
43 (B) how the State will hold local educational agencies and schools accountable for
44 educational progress of children with disabilities;
- 45
46 (C) how the State will provide technical assistance to local educational agencies and
47 schools to improve results for children with disabilities;
- 48
49 (D) how the State will address the identified needs for in-service and pre-service
50 preparation to ensure that all personnel who work with children with disabilities
51 (including both professional and paraprofessional personnel who provide special
52 education, general education, related services, or early intervention services) have the
53 skills and knowledge necessary to meet the needs of children with disabilities, including
54 a description of how--
- 55
56 (i) the State will prepare general and special education personnel with the content
57 knowledge and collaborative skills needed to meet the needs of children with
58 disabilities, including how the State will work with other States on common
59 certification criteria;
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- (ii) the State will prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;
 - (iii) the State will work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;
 - (iv) the State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation;
 - (v) the State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;
 - (vi) the State will enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;
 - (vii) the State will acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State will, when appropriate, adopt promising practices, materials, and technology;
 - (viii) the State will recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services;
 - (ix) the plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and
 - (x) the State will provide for the joint training of parents and special education, related services, and general education personnel;
- (E) strategies that will address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;
- (F) how the State will disseminate results of the local capacity-building and improvement projects funded under section 611 (f)(4);
- (G) how the State will address improving results for children with disabilities in the geographic areas of greatest need; and
- (H) how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and
- (4) describe how the improvement strategies described in paragraph(3) will be coordinated with public and private sector resources.
- (d) COMPETITIVE AWARDS.--
- (1) IN GENERAL.--The Secretary shall make grants under this subpart on a competitive basis.
 - (2) PRIORITY.--The Secretary may give priority to applications on the basis of need, as indicated by such information as the findings of Federal compliance reviews.

1 (e) PEER REVIEW.--

2
3 (1) IN GENERAL.--The Secretary shall use a panel of experts who are competent, by virtue of
4 their training, expertise, or experience, to evaluate applications under this subpart.

5
6 (2) COMPOSITION OF PANEL.--A majority of a panel described in paragraph(1) shall be
7 composed of individuals who are not employees of the Federal Government.

8
9 (3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.--The Secretary may use
10 available funds appropriated to carry out this subpart to pay the expenses and fees of panel
11 members who are not employees of the Federal Government.

12 (f) REPORTING PROCEDURES.--Each State educational agency that receives a grant under this
13 subpart shall submit performance reports to the Secretary pursuant to a schedule to be determined
14 by the Secretary, but not more frequently than annually. The reports shall describe the progress of
15 the State in meeting the performance goals established under section 612(a)(16), analyze the
16 effectiveness of the State's strategies in meeting those goals, and identify any changes in the
17 strategies needed to improve its performance.
18
19

20 **SEC. 654. USE OF FUNDS.**

21
22 (a) IN GENERAL.--

23
24 (1) ACTIVITIES.--A State educational agency that receives a grant under this subpart may use the
25 grant to carry out any activities that are described in the State's application and that are
26 consistent with the purpose of this subpart.

27
28 (2) CONTRACTS AND SUBGRANTS.--Each such State educational agency--

29
30 (A) shall, consistent with its partnership agreement under section 652(b), award contracts
31 or subgrants to local educational agencies, institutions of higher education, and parent
32 training and information centers, as appropriate, to carry out its State improvement plan
33 under this subpart; and

34
35 (B) may award contracts and subgrants to other public and private entities, including the
36 lead agency under part C, to carry out such plan.
37

38 (b) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.--A State educational agency that
39 receives a grant under this subpart--

40
41 (1) shall use not less than 75 percent of the funds it receives under the grant for any fiscal year--

42
43 (A) to ensure that there are sufficient regular education, special education, and related
44 services personnel who have the skills and knowledge necessary to meet the needs of
45 children with disabilities and developmental goals of young children; or

46
47 (B) to work with other States on common certification criteria; or

48
49 (2) shall use not less than 50 percent of such funds for such purposes, if the State demonstrates
50 to the Secretary's satisfaction that it has the personnel described in paragraph (1)(A).
51

52 (c) GRANTS TO OUTLYING AREAS.--Public Law 95-134, permitting the consolidation of grants to the
53 outlying areas, shall not apply to funds received under this subpart.
54

55 **SEC. 655. MINIMUM STATE GRANT AMOUNTS.**

56
57 (a) IN GENERAL.--The Secretary shall make a grant to each State educational agency whose
58 application the Secretary has selected for funding under this subpart in an amount for each fiscal
59 year that is--

60
61 (1) not less than \$500,000, nor more than \$2,000,000, in the case of the 50 States, the District
62 of Columbia, and the Commonwealth of Puerto Rico; and

- 1 (2) not less than \$80,000, in the case of an outlying area.
2
3 (b) INFLATION ADJUSTMENT.--Beginning with fiscal year 1999, the Secretary may increase the
4 maximum amount described in subsection (a)(1) to account for inflation.
5
6 (c) FACTORS.--The Secretary shall set the amount of each grant under subsection (a) after
7 considering--
8
9 (1) the amount of funds available for making the grants;
10
11 (2) the relative population of the State or outlying area; and
12
13 (3) the types of activities proposed by the State or outlying area.
14

15 **SEC. 656. AUTHORIZATION OF APPROPRIATIONS.**

16
17 There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each
18 of the fiscal years 1998 through 2002.
19

20 **SUBPART 2--COORDINATED RESEARCH, PERSONNEL PREPARATION, TECHNICAL** 21 **ASSISTANCE, SUPPORT, AND DISSEMINATION OF INFORMATION**

22 **SEC. 661. ADMINISTRATIVE PROVISIONS.**

- 23 (a) COMPREHENSIVE PLAN.--
24
25 (1) IN GENERAL.--The Secretary shall develop and implement a comprehensive plan for activities
26 carried out under this subpart in order to enhance the provision of educational, related
27 services, transitional, and early intervention services to children with disabilities under parts B
28 and C. The plan shall include mechanisms to address educational, related services,
29 transitional, and early intervention needs identified by State educational agencies in
30 applications submitted for State program improvement grants under subpart 1.
31
32 (2) PARTICIPANTS IN PLAN DEVELOPMENT.--In developing the plan described in paragraph
33 (1), the Secretary shall consult with--
34
35 (A) individuals with disabilities;
36
37 (B) parents of children with disabilities;
38
39 (C) appropriate professionals; and
40
41 (D) representatives of State and local educational agencies, private schools, institutions of
42 higher education, other Federal agencies, the National Council on Disability, and
43 national organizations with an interest in, and expertise in, providing services to children
44 with disabilities and their families.
45
46 (3) PUBLIC COMMENT.--The Secretary shall take public comment on the plan.
47
48 (4) DISTRIBUTION OF FUNDS.--In implementing the plan, the Secretary shall, to the extent
49 appropriate, ensure that funds are awarded to recipients under this subpart to carry out
50 activities that benefit, directly or indirectly, children with disabilities of all ages.
51
52 (5) REPORTS TO CONGRESS.--The Secretary shall periodically report to the Congress on the
53 Secretary's activities under this subsection, including an initial report not later than the date
54 that is 18 months after the date of the enactment of the Individuals with Disabilities Act
55 Amendments of 1997.
56
57 (b) ELIGIBLE APPLICANTS.--
58
59 (1) IN GENERAL.--Except as otherwise provided in this subpart, the following entities are eligible
60 to apply for a grant, contract, or cooperative agreement under this subpart:
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59
- (A) A State educational agency.
 - (B) A local educational agency.
 - (C) An institution of higher education.
 - (D) Any other public agency.
 - (E) A private nonprofit organization.
 - (F) An outlying area.
 - (G) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).
 - (H) A for-profit organization, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this subpart.
- (2) SPECIAL RULE.--The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to one or more categories of eligible entities described in paragraph (1).
- (c) USE OF FUNDS BY SECRETARY.--Notwithstanding any other provision of law, and in addition to any authority granted the Secretary under chapter 1 or chapter 2, the Secretary may use up to 20 percent of the funds available under either chapter 1 or chapter 2 for any fiscal year to carry out any activity, or combination of activities, subject to such conditions as the Secretary determines are appropriate effectively to carry out the purposes of such chapters, that--
- (A) is consistent with the purposes of chapter 1, chapter 2, or both; and
 - (B) involves--
 - (i) research;
 - (ii) personnel preparation;
 - (iii) parent training and information;
 - (iv) technical assistance and dissemination;
 - (v) technology development, demonstration, and utilization; or
 - (vi) media services.
- (d) SPECIAL POPULATIONS.--
- (1) APPLICATION REQUIREMENT.--In making an award of a grant, contract, or cooperative agreement under this subpart, the Secretary shall, as appropriate, require an applicant to demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.
 - (2) OUTREACH AND TECHNICAL ASSISTANCE.--
 - (A) REQUIREMENT.--Notwithstanding any other provision of this Act, the Secretary shall ensure that at least one percent of the total amount of funds appropriated to carry out this subpart is used for either or both of the following activities:

1 (i) To provide outreach and technical assistance to Historically Black Colleges and
2 Universities, and to institutions of higher education with minority enrollments of at
3 least 25 percent, to promote the participation of such colleges, universities, and
4 institutions in activities under this subpart.

5
6 (ii) To enable Historically Black Colleges and Universities, and the institutions
7 described in clause (i), to assist other colleges, universities, institutions, and
8 agencies in improving educational and transitional results for children with
9 disabilities.

10
11 (B) RESERVATION OF FUNDS.--The Secretary may reserve funds appropriated under this
12 subpart to satisfy the requirement of subparagraph (A).

13
14 (e) PRIORITIES--

15
16 (1) IN GENERAL.--Except as otherwise explicitly authorized in this subpart, the Secretary shall
17 ensure that a grant, contract, or cooperative agreement under chapter 1 or 2 is awarded only--

18
19 (A) for activities that are designed to benefit children with disabilities, their families, or the
20 personnel employed to work with such children or their families; or

21
22 (B) to benefit other individuals with disabilities that such chapter is intended to benefit.

23
24 (2) PRIORITY FOR PARTICULAR ACTIVITIES.--Subject to paragraph (1), the Secretary, in
25 making an award of a grant, contract, or cooperative agreement under this subpart, may,
26 without regard to the rule making procedures under section 553 of title 5, United States
27 Code, limit competitions to, or otherwise give priority to--

28
29 (A) projects that address one or more--

30
31 (i) age ranges;

32
33 (ii) disabilities;

34
35 (iii) school grades;

36
37 (iv) types of educational placements or early intervention environments;

38
39 (v) types of services;

40
41 (vi) content areas, such as reading; or

42
43 (vii) effective strategies for helping children with disabilities learn appropriate behavior
44 in the school and other community-based educational settings;

45
46 (B) projects that address the needs of children based on the severity of their disability;

47
48 (C) projects that address the needs of--

49
50 (i) low-achieving students;

51
52 (ii) underserved populations;

53
54 (iii) children from low-income families;

55
56 (iv) children with limited English proficiency;

57
58 (v) unserved and underserved areas;

59
60 (vi) particular types of geographic areas; or

61
62 (vii) children whose behavior interferes with their learning and socialization;

- (D) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;
- (E) projects that are carried out in particular areas of the country, to ensure broad geographic coverage; and
- (F) any activity that is expressly authorized in chapter 1 or 2.

(f) APPLICANT AND RECIPIENT RESPONSIBILITIES.--

(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.--The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under this subpart--

- (A) involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project; and
- (B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

(2) ADDITIONAL RESPONSIBILITIES.--The Secretary may require a recipient of a grant, contract, or cooperative agreement for a project under this subpart--

- (A) to share in the cost of the project;
- (B) to prepare the research and evaluation findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;
- (C) to disseminate such findings and products; and
- (D) to collaborate with other such recipients in carrying out subparagraphs (B) and (C).

(g) APPLICATION MANAGEMENT.--

(1) STANDING PANEL.--

(A) IN GENERAL.--The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart that, individually, request more than \$75,000 per year in Federal financial assistance.

(B) MEMBERSHIP.--The standing panel shall include, at a minimum--

- (i) individuals who are representatives of institutions of higher education that plan, develop, and carry out programs of personnel preparation;
- (ii) individuals who design and carry out programs of research targeted to the improvement of special education programs and services;
- (iii) individuals who have recognized experience and knowledge necessary to integrate and apply research findings to improve educational and transitional results for children with disabilities;
- (iv) individuals who administer programs at the State or local level in which children with disabilities participate;
- (v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

- 1 (vi) individuals who establish policies that affect the delivery of services to children
2 with disabilities;
3
4 (vii) individuals who are parents of children with disabilities who are benefiting, or have
5 benefited, from coordinated research, personnel preparation, and technical
6 assistance; and
7
8 (viii) individuals with disabilities.
9
- 10 (C) TRAINING.--The Secretary shall provide training to the individuals who are selected as
11 members of the standing panel under this paragraph.
12
13 (D) TERM.--No individual shall serve on the standing panel for more than 3 consecutive
14 years, unless the Secretary determines that the individual's continued participation is
15 necessary for the sound administration of this subpart.
16
- 17 (2) PEER-REVIEW PANELS FOR PARTICULAR COMPETITIONS.--
18
19 (A) COMPOSITION.--The Secretary shall ensure that each sub-panel selected from the
20 standing panel that reviews applications under this subpart includes--
21
22 (i) individuals with knowledge and expertise on the issues addressed by the
23 activities authorized by the subpart; and
24
25 (ii) to the extent practicable, parents of children with disabilities, individuals with
26 disabilities, and persons from diverse backgrounds.
27
28 (B) FEDERAL EMPLOYMENT LIMITATION.--A majority of the individuals on each sub-
29 panel that reviews an application under this subpart shall be individuals who are not
30 employees of the Federal Government.
31
- 32 (3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.--
33
34 (A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.--The Secretary may
35 use funds available under this subpart to pay the expenses and fees of the panel
36 members who are not officers or employees of the Federal Government.
37
38 (B) ADMINISTRATIVE SUPPORT.--The Secretary may use not more than 1 percent of the
39 funds appropriated to carry out this subpart to pay non-Federal entities for
40 administrative support related to management of applications submitted under this
41 subpart.
42
43 (C) MONITORING.--The Secretary may use funds available under this subpart to pay the
44 expenses of Federal employees to conduct on-site monitoring of projects receiving
45 \$500,000 or more for any fiscal year under this subpart.
46
- 47 (h) PROGRAM EVALUATION.--The Secretary may use funds appropriated to carry out this subpart to
48 evaluate activities carried out under the subpart.
49
- 50 (i) MINIMUM FUNDING REQUIRED.--
51
52 (1) IN GENERAL.--Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at
53 least the following amounts are provided under this subpart to address the following needs:
54
55 (A) \$12,832,000 to address the educational, related services, transitional, and early
56 intervention needs of children with deaf-blindness.
57
58 (B) \$4,000,000 to address the postsecondary, vocational, technical, continuing, and adult
59 education needs of individuals with deafness.
60

(C) \$4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

(2) RATABLE REDUCTION.--If the total amount appropriated to carry out sections 672, 673, and 685 for any fiscal year is less than \$130,000,000, the amounts listed in (1) shall be ratably reduced.

(j) ELIGIBILITY FOR FINANCIAL ASSISTANCE.--Effective for fiscal years for which the Secretary may make grants under section 619(b), no State or local educational agency or educational service agency or other public institution or agency may receive a grant under this part which relates exclusively to programs, projects, and activities pertaining to children aged three to five, inclusive, unless the State is eligible to receive a grant under section 619(b).

CHAPTER 1--IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRANSITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES THROUGH COORDINATED RESEARCH AND PERSONNEL PREPARATION

SEC. 671. FINDINGS AND PURPOSE.

(a) FINDINGS.--The Congress finds the following:

(1) The Federal Government has an ongoing obligation to support programs, projects, and activities that contribute to positive results for children with disabilities, enabling them--

(A) to meet their early intervention, educational, and transitional goals and, to the maximum extent possible, educational standards that have been established for all children; and

(B) to acquire the skills that will empower them to lead productive and independent adult lives.

(2) (A) As a result of more than 20 years of Federal support for research, demonstration projects, and personnel preparation, there is an important knowledge base for improving results for children with disabilities.

(B) Such knowledge should be used by States and local educational agencies to design and implement state-of-the-art educational systems that consider the needs of, and include, children with disabilities, especially in environments in which they can learn along with their peers and achieve results measured by the same standards as the results of their peers.

(3) (A) Continued Federal support is essential for the development and maintenance of a coordinated and high-quality program of research, demonstration projects, dissemination of information, and personnel preparation.

(B) Such support--

(i) enables State educational agencies and local educational agencies to improve their educational systems and results for children with disabilities;

(ii) enables State and local agencies to improve early intervention services and results for infants and toddlers with disabilities and their families; and

(iii) enhances the opportunities for general and special education personnel, related services personnel, parents, and paraprofessionals to participate in pre-service and in-service training, to collaborate, and to improve results for children with disabilities and their families.

(4) The Federal Government plays a critical role in facilitating the availability of an adequate number of qualified personnel--

(A) to serve effectively the over 5,000,000 children with disabilities;

- 1
2
3 (B) to assume leadership positions in administrative and direct-service capacities related to
4 teacher training and research concerning the provision of early intervention services,
5 special education, and related services; and
6
7 (C) to work with children with low-incidence disabilities and their families.
8
9 (5) The Federal Government performs the role described in paragraph (4)--
10
11 (A) by supporting models of personnel development that reflect successful practice,
12 including strategies for recruiting, preparing, and retaining personnel;
13
14 (B) by promoting the coordination and integration of--
15 (i) personnel-development activities for teachers of children with disabilities; and
16
17 (ii) other personnel-development activities supported under Federal law, including
18 this chapter;
19
20 (C) by supporting the development and dissemination of information about teaching
21 standards; and
22
23 (D) by promoting the coordination and integration of personnel-development activities
24 through linkage with systemic-change activities within States and nationally.
25
26 (b) PURPOSE.--The purpose of this chapter is to provide Federal funding for coordinated research,
27 demonstration projects, outreach, and personnel-preparation activities that--
28
29 (1) are described in sections 672 through 674;
30
31 (2) are linked with, and promote, systemic change; and
32
33 (3) improve early intervention, educational, and transitional results for children with disabilities.
34

35 **SEC. 672. RESEARCH AND INNOVATION TO IMPROVE SERVICES AND RESULTS**
36 **FOR CHILDREN WITH DISABILITIES.**
37

- 38 (a) IN GENERAL.--The Secretary shall make competitive grants to, or enter into contracts or
39 cooperative agreements with, eligible entities to produce, and advance the use of, knowledge--
40
41 (1) to improve--
42
43 (A) services provided under this Act, including the practices of professionals and others
44 involved in providing such services to children with disabilities; and
45
46 (B) educational results for children with disabilities;
47
48 (2) to address the special needs of preschool-aged children and infants and toddlers with
49 disabilities, including infants and toddlers who would be at risk of having substantial
50 developmental delays if early intervention services were not provided to them;
51
52 (3) to address the specific problems of over-identification and under-identification of children with
53 disabilities;
54
55 (4) to develop and implement effective strategies for addressing inappropriate behavior of
56 students with disabilities in schools, including strategies to prevent children with emotional
57 and behavioral problems from developing emotional disturbances that require the provision of
58 special education and related services;
59
60 (5) to improve secondary and postsecondary education and transitional services for children with
61 disabilities; and
62

- 1 (6) to address the range of special education, related services, and early intervention needs of
2 children with disabilities who need significant levels of support to maximize their participation
3 and learning in school and in the community.
4
- 5 (b) NEW KNOWLEDGE PRODUCTION; AUTHORIZED ACTIVITIES.--
6
- 7 (1) IN GENERAL.--In carrying out this section, the Secretary shall support activities, consistent
8 with the objectives described in subsection (a), that lead to the production of new knowledge.
9
- 10 (2) AUTHORIZED ACTIVITIES.--Activities that may be carried out under this subsection include
11 activities such as the following:
12
- 13 (A) Expanding understanding of the relationships between learning characteristics of
14 children with disabilities and the diverse ethnic, cultural, linguistic, social, and economic
15 backgrounds of children with disabilities and their families.
16
- 17 (B) Developing or identifying innovative, effective, and efficient curricula designs,
18 instructional approaches, and strategies, and developing or identifying positive
19 academic and social learning opportunities, that--
20
- 21 (i) enable children with disabilities to make effective transitions described in section
22 674(b)(3)(C) or transitions between educational settings; and
23
- 24 (ii) improve educational and transitional results for children with disabilities at all levels
25 of the educational system in which the activities are carried out and, in particular,
26 that improve the progress of the children, as measured by assessments within
27 the general education curriculum involved.
28
- 29 (C) Advancing the design of assessment tools and procedures that will accurately and
30 efficiently determine the special instructional, learning, and behavioral needs of
31 children with disabilities, especially within the context of general education.
32
- 33 (D) Studying and promoting improved alignment and compatibility of general and special
34 education reforms concerned with curricular and instructional reform, evaluation and
35 accountability of such reforms, and administrative procedures.
36
- 37 (E) Advancing the design, development, and integration of technology, assistive
38 technology devices, media, and materials, to improve early intervention, educational,
39 and transitional services and results for children with disabilities.
40
- 41 (F) Improving designs, processes, and results of personnel preparation for personnel who
42 provide services to children with disabilities through the acquisition of information on,
43 and implementation of, research-based practices.
44
- 45 (G) Advancing knowledge about the coordination of education with health and social
46 services.
47
- 48 (H) Producing information on the long-term impact of early intervention and education on
49 results for individuals with disabilities through large-scale longitudinal studies.
50
- 51 (c) INTEGRATION OF RESEARCH AND PRACTICE; AUTHORIZED ACTIVITIES.--
52
- 53 (1) IN GENERAL.--In carrying out this section, the Secretary shall support activities, consistent
54 with the objectives described in subsection (a), that integrate research and practice, including
55 activities that support State systemic-change and local capacity-building and improvement
56 efforts.
57
- 58 (2) AUTHORIZED ACTIVITIES.--Activities that may be carried out under this subsection include
59 activities such as the following:
60

- 1 (A) Model demonstration projects to apply and test research findings in typical service
2 settings to determine the usability, effectiveness, and general applicability of such
3 research findings in such areas as improving instructional methods, curricula, and tools,
4 such as textbooks and media.
5
6 (B) Demonstrating and applying research-based findings to facilitate systemic changes,
7 related to the provision of services to children with disabilities, in policy, procedure,
8 practice, and the training and use of personnel.
9
10 (C) Promoting and demonstrating the coordination of early intervention and educational
11 services for children with disabilities with services provided by health, rehabilitation, and
12 social service agencies.
13
14 (D) Identifying and disseminating solutions that overcome systemic barriers to the effective
15 and efficient delivery of early intervention, educational, and transitional services to
16 children with disabilities.
17
18 (d) IMPROVING THE USE OF PROFESSIONAL KNOWLEDGE; AUTHORIZED ACTIVITIES.--
19
20 (1) IN GENERAL.--In carrying out this section, the Secretary shall support activities, consistent
21 with the objectives described in subsection (a), that improve the use of professional
22 knowledge, including activities that support State systemic-change and local capacity-building
23 and improvement efforts.
24
25 (2) AUTHORIZED ACTIVITIES.--Activities that may be carried out under this subsection include
26 activities such as the following:
27
28 (A) Synthesizing useful research and other information relating to the provision of services
29 to children with disabilities, including effective practices.
30
31 (B) Analyzing professional knowledge bases to advance an understanding of the
32 relationships, and the effectiveness of practices, relating to the provision of services to
33 children with disabilities.
34
35 (C) Ensuring that research and related products are in appropriate formats for distribution to
36 teachers, parents, and individuals with disabilities.
37
38 (D) Enabling professionals, parents of children with disabilities, and other persons, to learn
39 about, and implement, the findings of research, and successful practices developed in
40 model demonstration projects, relating to the provision of services to children with
41 disabilities.
42
43 (E) Conducting outreach, and disseminating information relating to successful approaches
44 to overcoming systemic barriers to the effective and efficient delivery of early
45 intervention, educational, and transitional services, to personnel who provide services
46 to children with disabilities.
47
48 (e) BALANCE AMONG ACTIVITIES AND AGE RANGES.--In carrying out this section, the Secretary
49 shall ensure that there is an appropriate balance--
50
51 (1) among knowledge production, integration of research and practice, and use of professional
52 knowledge; and
53
54 (2) across all age ranges of children with disabilities.
55
56 (f) APPLICATIONS.--An eligible entity that wishes to receive a grant, or enter into a contract or
57 cooperative agreement, under this section shall submit an application to the Secretary at such time,
58 in such manner, and containing such information as the Secretary may require.
59
60 (g) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated to carry out
61 this section such sums as may be necessary for each of the fiscal years 1998 through 2002.
62

1 **SEC. 673. PERSONNEL PREPARATION TO IMPROVE SERVICES AND RESULTS FOR**
2 **CHILDREN WITH DISABILITIES.**
3

4 (a) IN GENERAL.--The Secretary shall, on a competitive basis, make grants to, or enter into contracts or
5 cooperative agreements with, eligible entities--
6

- 7 (1) to help address State-identified needs for qualified personnel in special education, related
8 services, early intervention, and regular education, to work with children with disabilities; and
9
10 (2) to ensure that those personnel have the skills and knowledge, derived from practices that
11 have been determined, through research and experience, to be successful, that are needed
12 to serve those children.
13

14 (b) LOW-INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.--
15

- 16 (1) IN GENERAL.--In carrying out this section, the Secretary shall support activities, consistent
17 with the objectives described in subsection (a), that benefit children with low-incidence
18 disabilities.
19
20 (2) AUTHORIZED ACTIVITIES.--Activities that may be carried out under this subsection include
21 activities such as the following:
22
23 (A) Preparing persons who--
24
25 (i) have prior training in educational and other related service fields; and
26
27 (ii) are studying to obtain degrees, certificates, or licensure that will enable them to
28 assist children with disabilities to achieve the objectives set out in their
29 individualized education programs described in section 614(d), or to assist infants
30 and toddlers with disabilities to achieve the outcomes described in their
31 individualized family service plans described in section 636.
32
33 (B) Providing personnel from various disciplines with interdisciplinary training that will
34 contribute to improvement in early intervention, educational, and transitional results for
35 children with disabilities.
36
37 (C) Preparing personnel in the innovative uses and application of technology to enhance
38 learning by children with disabilities through early intervention, educational, and
39 transitional services.
40
41 (D) Preparing personnel who provide services to visually impaired or blind children to teach
42 and use braille in the provision of services to such children.
43
44 (E) Preparing personnel to be qualified educational interpreters, to assist children with
45 disabilities, particularly deaf and hard-of-hearing children in school and school-related
46 activities and deaf and hard-of-hearing infants and toddlers and preschool children in
47 early intervention and preschool programs.
48
49 (F) Preparing personnel who provide services to children with significant cognitive
50 disabilities and children with multiple disabilities.
51
52 (3) DEFINITION.--As used in this section, the term 'low-incidence disability' means--
53
54 (A) a visual or hearing impairment, or simultaneous visual and hearing impairments;
55
56 (B) a significant cognitive impairment; or
57
58 (C) any impairment for which a small number of personnel with highly specialized skills and
59 knowledge are needed in order for children with that impairment to receive early
60 intervention services or a free appropriate public education.
61

- 1 (4) SELECTION OF RECIPIENTS.--In selecting recipients under this subsection, the Secretary
2 may give preference to applications that propose to prepare personnel in more than one low-
3 incidence disability, such as deafness and blindness.
- 4
- 5 (5) PREPARATION IN USE OF BRAILLE.--The Secretary shall ensure that all recipients of
6 assistance under this subsection who will use that assistance to prepare personnel to provide
7 services to visually impaired or blind children that can appropriately be provided in braille will
8 prepare those individuals to provide those services in braille.
- 9
- 10 (c) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.--
- 11
- 12 (1) IN GENERAL.--In carrying out this section, the Secretary shall support leadership preparation
13 activities that are consistent with the objectives described in subsection (a).
- 14
- 15 (2) AUTHORIZED ACTIVITIES.--Activities that may be carried out under this subsection include
16 activities such as the following:
- 17
- 18 (A) Preparing personnel at the advanced graduate, doctoral, and postdoctoral levels of
19 training to administer, enhance, or provide services for children with disabilities.
- 20
- 21 (B) Providing interdisciplinary training for various types of leadership personnel, including
22 teacher preparation faculty, administrators, researchers, supervisors, principals, and
23 other persons whose work affects early intervention, educational, and transitional
24 services for children with disabilities.
- 25
- 26 (d) PROJECTS OF NATIONAL SIGNIFICANCE; AUTHORIZED ACTIVITIES.--
- 27
- 28 (1) IN GENERAL.--In carrying out this section, the Secretary shall support activities, consistent
29 with the objectives described in subsection (a), that are of national significance and have
30 broad applicability.
- 31
- 32 (2) AUTHORIZED ACTIVITIES.--Activities that may be carried out under this subsection include
33 activities such as the following:
- 34
- 35 (A) Developing and demonstrating effective and efficient practices for preparing personnel
36 to provide services to children with disabilities, including practices that address any
37 needs identified in the State's improvement plan under part C;
- 38
- 39 (B) Demonstrating the application of significant knowledge derived from research and other
40 sources in the development of programs to prepare personnel to provide services to
41 children with disabilities.
- 42
- 43 (C) Demonstrating models for the preparation of, and interdisciplinary training of, special
44 education and general education personnel, to enable the personnel--
- 45
- 46 (i) to acquire the collaboration skills necessary to work within teams to assist children
47 with disabilities; and
- 48
- 49 (ii) to achieve results that meet challenging standards, particularly within the general
50 education curriculum.
- 51
- 52 (D) Demonstrating models that reduce shortages of teachers, and personnel from other
53 relevant disciplines, who serve children with disabilities, through reciprocity
54 arrangements between States that are related to licensure and certification.
- 55
- 56 (E) Developing, evaluating, and disseminating model teaching standards for persons
57 working with children with disabilities.
- 58
- 59 (F) Promoting the transferability, across State and local jurisdictions, of licensure and
60 certification of teachers and administrators working with such children.
- 61

- 1 (G) Developing and disseminating models that prepare teachers with strategies, including
2 behavioral interventions, for addressing the conduct of children with disabilities that
3 impedes their learning and that of others in the classroom.
4
5 (H) Institutes that provide professional development that addresses the needs of children
6 with disabilities to teachers or teams of teachers, and where appropriate, to school
7 board members, administrators, principals, pupil-service personnel, and other staff from
8 individual schools.
9
10 (I) Projects to improve the ability of general education teachers, principals, and other
11 administrators to meet the needs of children with disabilities.
12
13 (J) Developing, evaluating, and disseminating innovative models for the recruitment,
14 induction, retention, and assessment of new, qualified teachers, especially from groups
15 that are underrepresented in the teaching profession, including individuals with
16 disabilities.
17
18 (K) Supporting institutions of higher education with minority enrollments of at least 25
19 percent for the purpose of preparing personnel to work with children with disabilities.
20
21 (e) HIGH-INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.--
22
23 (1) IN GENERAL.--In carrying out this section, the Secretary shall support activities, consistent
24 with the objectives described in subsection (a), to benefit children with high-incidence
25 disabilities, such as children with specific learning disabilities, speech or language impairment,
26 or mental retardation.
27
28 (2) AUTHORIZED ACTIVITIES.--Activities that may be carried out under this subsection include
29 the following:
30
31 (A) Activities undertaken by institutions of higher education, local educational agencies,
32 and other local entities--
33
34 (i) to improve and reform their existing programs to prepare teachers and related
35 services personnel--
36
37 (I) to meet the diverse needs of children with disabilities for early intervention,
38 educational, and transitional services; and
39
40 (II) to work collaboratively in regular classroom settings; and
41
42 (ii) to incorporate best practices and research-based knowledge about preparing
43 personnel so they will have the knowledge and skills to improve educational
44 results for children with disabilities.
45
46 (B) Activities incorporating innovative strategies to recruit and prepare teachers and other
47 personnel to meet the needs of areas in which there are acute and persistent shortages
48 of personnel.
49
50 (C) Developing career opportunities for paraprofessionals to receive training as special
51 education teachers, related services personnel, and early intervention personnel,
52 including interdisciplinary training to enable them to improve early intervention,
53 educational, and transitional results for children with disabilities.
54
55 (f) APPLICATIONS.--
56
57 (1) IN GENERAL.--Any eligible entity that wishes to receive a grant, or enter into a contract or
58 cooperative agreement, under this section shall submit an application to the Secretary at such
59 time, in such manner, and containing such information as the Secretary may require.
60
61 (2) IDENTIFIED STATE NEEDS.--
62

- 1 (A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.--Any application under
2 subsection(b), (c), or (e) shall include information demonstrating to the satisfaction of
3 the Secretary that the activities described in the application will address needs
4 identified by the State or States the applicant proposes to serve.
5
6 (B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.--Any applicant that is not a
7 local educational agency or a State educational agency shall include information
8 demonstrating to the satisfaction of the Secretary that the applicant and one or more
9 State educational agencies have engaged in a cooperative effort to plan the project to
10 which the application pertains, and will cooperate in carrying out and monitoring the
11 project.
12
13 (3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.--The
14 Secretary may require applicants to provide letters from one or more States stating that the
15 States--
16
17 (A) intend to accept successful completion of the proposed personnel preparation
18 program as meeting State personnel standards for serving children with disabilities or
19 serving infants and toddlers with disabilities; and
20
21 (B) need personnel in the area or areas in which the applicant proposes to provide
22 preparation, as identified in the States' comprehensive systems of personnel
23 development under parts B and C.
24
25 (g) SELECTION OF RECIPIENTS.--
26
27 (1) IMPACT OF PROJECT.--In selecting recipients under this section, the Secretary may
28 consider the impact of the project proposed in the application in meeting the need for
29 personnel identified by the States.
30
31 (2) REQUIREMENT ON APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.--
32 The Secretary shall make grants under this section only to eligible applicants that meet State
33 and professionally-recognized standards for the preparation of special education and related
34 services personnel, if the purpose of the project is to assist personnel in obtaining degrees.
35
36 (3) PREFERENCES.--In selecting recipients under this section, the Secretary may--
37
38 (A) give preference to institutions of higher education that are educating regular education
39 personnel to meet the needs of children with disabilities in integrated settings and
40 educating special education personnel to work in collaboration with regular educators in
41 integrated settings; and
42
43 (B) give preference to institutions of higher education that are successfully recruiting and
44 preparing individuals with disabilities and individuals from groups that are
45 underrepresented in the profession for which they are preparing individuals.
46
47 (h) SERVICE OBLIGATION.--
48
49 (1) IN GENERAL.--Each application for funds under subsections (b) and (e), and to the extent
50 appropriate subsection (d), shall include an assurance that the applicant will ensure that
51 individuals who receive a scholarship under the proposed project will subsequently provide
52 special education and related services to children with disabilities for a period of 2 years for
53 every year for which assistance was received or repay all or part of the cost of that assistance,
54 in accordance with regulations issued by the Secretary.
55
56 (2) LEADERSHIP PREPARATION.--Each application for funds under subsection (c) shall include
57 an assurance that the applicant will ensure that individuals who receive a scholarship under
58 the proposed project will subsequently perform work related to their preparation for a period
59 of 2 years for every year for which assistance was received or repay all or part of such costs, in
60 accordance with regulations issued by the Secretary.
61

- 1 (i) SCHOLARSHIPS.--The Secretary may include funds for scholarships, with necessary stipends and
2 allowances, in awards under subsections (b), (c), (d), and (e).
3
4 (j) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated to carry out
5 this section such sums as may be necessary for each of the fiscal years 1998 through 2002.
6

7 **SEC. 674. STUDIES AND EVALUATIONS.**
8

9 (a) STUDIES AND EVALUATIONS.--
10

- 11 (1) IN GENERAL.--The Secretary shall, directly or through grants, contracts, or cooperative
12 agreements, assess the progress in the implementation of this Act, including the
13 effectiveness of State and local efforts to provide--
14
15 (A) a free appropriate public education to children with disabilities; and
16
17 (B) early intervention services to infants and toddlers with disabilities and infants and
18 toddlers who would be at risk of having substantial developmental delays if early
19 intervention services were not provided to them.
20
21 (2) AUTHORIZED ACTIVITIES.--In carrying out this subsection, the Secretary may support
22 studies, evaluations, and assessments, including studies that--
23
24 (A) analyze measurable impact, outcomes, and results achieved by State educational
25 agencies and local educational agencies through their activities to reform policies,
26 procedures, and practices designed to improve educational and transitional services
27 and results for children with disabilities;
28
29 (B) analyze State and local needs for professional development, parent training, and other
30 appropriate activities that can reduce the need for disciplinary actions involving children
31 with disabilities;
32
33 (C) assess educational and transitional services and results for children with disabilities from
34 minority backgrounds, including--
35
36 (i) data on--
37
38 (I) the number of minority children who are referred for special education
39 evaluation;
40
41 (II) the number of minority children who are receiving special education and
42 related services and their educational or other service placement; and
43
44 (III) the number of minority children who graduated from secondary and
45 postsecondary education programs; and
46
47 (ii) the performance of children with disabilities from minority backgrounds on State
48 assessments and other performance indicators established for all students;
49
50 (D) measure educational and transitional services and results of children with disabilities
51 under this Act, including longitudinal studies that--
52
53 (i) examine educational and transitional services and results for children with
54 disabilities who are 3 through 17 years of age and are receiving special education
55 and related services under this Act, using a national, representative sample of
56 distinct age cohorts and disability categories; and
57
58 (ii) examine educational results, postsecondary placement, and employment status
59 of individuals with disabilities, 18 through 21 years of age, who are receiving or
60 have received special education and related services under this Act; and
61
62 (E) identify and report on the placement of children with disabilities by disability category.

1
2 (b) NATIONAL ASSESSMENT.--
3

4 (1) IN GENERAL.--The Secretary shall carry out a national assessment of activities carried out with
5 Federal funds under this Act in order--
6

7 (A) to determine the effectiveness of this Act in achieving its purposes;
8

9 (B) to provide information to the President, the Congress, the States, local educational
10 agencies, and the public on how to implement the Act more effectively; and
11

12 (C) to provide the President and the Congress with information that will be useful in
13 developing legislation to achieve the purposes of this Act more effectively.
14

15 (2) CONSULTATION.--The Secretary shall plan, review, and conduct the national assessment
16 under this subsection in consultation with researchers, State practitioners, local practitioners,
17 parents of children with disabilities, individuals with disabilities, and other appropriate
18 individuals.
19

20 (3) SCOPE OF ASSESSMENT.--The national assessment shall examine how well schools, local
21 educational agencies, States, other recipients of assistance under this Act, and the Secretary
22 are achieving the purposes of this Act, including--
23

24 (A) improving the performance of children with disabilities in general scholastic activities
25 and assessments as compared to nondisabled children;
26

27 (B) providing for the participation of children with disabilities in the general curriculum;
28

29 (C) helping children with disabilities make successful transitions from--
30

31 (i) early intervention services to preschool education;
32

33 (ii) preschool education to elementary school; and
34

35 (iii) secondary school to adult life;
36

37 (D) placing and serving children with disabilities, including minority children, in the least
38 restrictive environment appropriate;
39

40 (E) preventing children with disabilities, especially children with emotional disturbances and
41 specific learning disabilities, from dropping out of school;
42

43 (F) addressing behavioral problems of children with disabilities as compared to nondisabled
44 children;
45

46 (G) coordinating services provided under this Act with each other, with other educational
47 and pupil services (including preschool services), and with health and social services
48 funded from other sources;
49

50 (H) providing for the participation of parents of children with disabilities in the education of
51 their children; and
52

53 (I) resolving disagreements between education personnel and parents through activities
54 such as mediation.
55

56 (4) INTERIM AND FINAL REPORTS.--The Secretary shall submit to the President and the
57 Congress--
58

59 (A) an interim report that summarizes the preliminary findings of the assessment not later
60 than October 1, 1999; and
61

62 (B) a final report of the findings of the assessment not later than October 1, 2001.

(c) ANNUAL REPORT.--The Secretary shall report annually to the Congress on--

- (1) an analysis and summary of the data reported by the States and the Secretary of the Interior under section 618;
- (2) the results of activities conducted under subsection (a);
- (3) the findings and determinations resulting from reviews of State implementation of this Act.

(d) TECHNICAL ASSISTANCE TO LEAS.--The Secretary shall provide directly, or through grants, contracts, or cooperative agreements, technical assistance to local educational agencies to assist them in carrying out local capacity-building and improvement projects under section 611(f)(4) and other LEA systemic improvement activities under this Act.

(e) RESERVATION FOR STUDIES AND TECHNICAL ASSISTANCE.--

- (1) IN GENERAL.--Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve up to one-half of one percent of the amount appropriated under parts B and C for each fiscal year to carry out this section.
- (2) MAXIMUM AMOUNT.--For the first fiscal year in which the amount described in paragraph (1) is at least \$20,000,000, the maximum amount the Secretary may reserve under paragraph (1) is \$20,000,000. For each subsequent fiscal year, the maximum amount the Secretary may reserve under paragraph (1) is \$20,000,000, increased by the cumulative rate of inflation since the fiscal year described in the previous sentence.
- (3) USE OF MAXIMUM AMOUNT.--In any fiscal year described in paragraph (2) for which the Secretary reserves the maximum amount described in that paragraph, the Secretary shall use at least half of the reserved amount for activities under subsection (d).

CHAPTER 2--IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRANSITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES THROUGH COORDINATED TECHNICAL ASSISTANCE, SUPPORT, AND DISSEMINATION OF INFORMATION

SEC. 681. FINDINGS AND PURPOSES.

(a) IN GENERAL.--The Congress finds as follows:

- (1) National technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve quality early intervention, educational, and transitional results for children with disabilities and their families.
- (2) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.
- (3) Parent training and information activities have taken on increased importance in efforts to assist parents of a child with a disability in dealing with the multiple pressures of rearing such a child and are of particular importance in--
 - (A) ensuring the involvement of such parents in planning and decisionmaking with respect to early intervention, educational, and transitional services; and
 - (B) achieving quality early intervention, educational, and transitional results for children with disabilities;
 - (C) providing such parents information on their rights and protections under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;

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- (D) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 674(b)(3)(C); and
 - (E) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families.
- (4) Providers of parent training and information activities need to ensure that such parents who have limited access to services and supports, due to economic, cultural, or linguistic barriers, are provided with access to appropriate parent training and information activities.
- (5) Parents of children with disabilities need information that helps the parents to understand the rights and responsibilities of their children under part B.
- (6) The provision of coordinated technical assistance and dissemination of information to State and local agencies, institutions of higher education, and other providers of services to children with disabilities is essential in--
- (A) supporting the process of achieving systemic change;
 - (B) supporting actions in areas of priority specific to the improvement of early intervention, educational, and transitional results for children with disabilities;
 - (C) conveying information and assistance that are--
 - (i) based on current research (as of the date the information and assistance are conveyed);
 - (ii) accessible and meaningful for use in supporting systemic-change activities of State and local partnerships; and
 - (iii) linked directly to improving early intervention, educational, and transitional services and results for children with disabilities and their families; and
 - (D) organizing systems and information networks for such information, based on modern technology related to--
 - (i) storing and gaining access to information; and
 - (ii) distributing information in a systematic manner to parents, students, professionals, and policymakers.
- (7) Federal support for carrying out technology research, technology development, and educational media services and activities has resulted in major innovations that have significantly improved early intervention, educational, and transitional services and results for children with disabilities and their families.
- (8) Such Federal support is needed--
- (A) to stimulate the development of software, interactive learning tools, and devices to address early intervention, educational, and transitional needs of children with disabilities who have certain disabilities;
 - (B) to make information available on technology research, technology development, and educational media services and activities to individuals involved in the provision of early intervention, educational, and transitional services to children with disabilities;
 - (C) to promote the integration of technology into curricula to improve early intervention, educational, and transitional results for children with disabilities;

- (D) to provide incentives for the development of technology and media devices and tools that are not readily found or available because of the small size of potential markets;
- (E) to make resources available to pay for such devices and tools and educational media services and activities;
- (F) to promote the training of personnel--
 - (i) to provide such devices, tools, services, and activities in a competent manner; and
 - (ii) to assist children with disabilities and their families in using such devices, tools, services, and activities; and
- (G) to coordinate the provision of such devices, tools, services, and activities--
 - (i) among State human services programs; and
 - (ii) between such programs and private agencies.

(b) PURPOSES.--The purposes of this chapter are to ensure that--

- (1) children with disabilities, and their parents, receive training and information on their rights and protections under this Act, in order to develop the skills necessary to effectively participate in planning and decisionmaking relating to early intervention, educational, and transitional services and in systemic-change activities;
- (2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such persons, through systemic-change activities and other efforts, to improve early intervention, educational, and transitional services and results for children with disabilities and their families;
- (3) appropriate technology and media are researched, developed, demonstrated, and made available in timely and accessible formats to parents, teachers, and all types of personnel providing services to children with disabilities to support their roles as partners in the improvement and implementation of early intervention, educational, and transitional services and results for children with disabilities and their families;
- (4) on reaching the age of majority under State law, children with disabilities understand their rights and responsibilities under part B, if the State provides for the transfer of parental rights under section 615(m); and
- (5) the general welfare of deaf and hard-of-hearing individuals is promoted by--
 - (A) bringing to such individuals understanding and appreciation of the films and television programs that play an important part in the general and cultural advancement of hearing individuals;
 - (B) providing, through those films and television programs, enriched educational and cultural experiences through which deaf and hard-of-hearing individuals can better understand the realities of their environment; and
 - (C) providing wholesome and rewarding experiences that deaf and hard-of-hearing individuals may share.

SEC. 682. PARENT TRAINING AND INFORMATION CENTERS.

- (a) PROGRAM AUTHORIZED.--The Secretary may make grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

- 1 (b) REQUIRED ACTIVITIES.--Each parent training and information center that receives assistance
2 under this section shall--
3
4 (1) provide training and information that meets the training and information needs of parents of
5 children with disabilities living in the area served by the center, particularly underserved
6 parents and parents of children who may be inappropriately identified;
7
8 (2) assist parents to understand the availability of, and how to effectively use, procedural
9 safeguards under this Act, including encouraging the use, and explaining the benefits, of
10 alternative methods of dispute resolution, such as the mediation process described in section
11 615(e);
12
13 (3) serve the parents of infants, toddlers, and children with the full range of disabilities;
14
15 (4) assist parents to--
16
17 (A) better understand the nature of their children's disabilities and their educational and
18 developmental needs;
19
20 (B) communicate effectively with personnel responsible for providing special education,
21 early intervention, and related services;
22
23 (C) participate in decisionmaking processes and the development of individualized
24 education programs under part B and individualized family service plans under part C;
25
26 (D) obtain appropriate information about the range of options, programs, services, and
27 resources available to assist children with disabilities and their families;
28
29 (E) understand the provisions of this Act for the education of, and the provision of early
30 intervention services to, children with disabilities; and
31
32 (F) participate in school reform activities;
33
34 (5) in States where the State elects to contract with the parent training and information center,
35 contract with State educational agencies to provide, consistent with subparagraphs (B) and
36 (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to
37 them;
38
39 (6) network with appropriate clearinghouses, including organizations conducting national
40 dissemination activities under section 685(d), and with other national, State, and local
41 organizations and agencies, such as protection and advocacy agencies, that serve parents
42 and families of children with the full range of disabilities; and
43
44 (7) annually report to the Secretary on--
45
46 (A) the number of parents to whom it provided information and training in the most recently
47 concluded fiscal year; and
48
49 (B) the effectiveness of strategies used to reach and serve parents, including underserved
50 parents of children with disabilities.
51
52 (c) OPTIONAL ACTIVITIES.--A parent training and information center that receives assistance under
53 this section may--
54
55 (1) provide information to teachers and other professionals who provide special education and
56 related services to children with disabilities;
57
58 (2) assist students with disabilities to understand their rights and responsibilities under section
59 615 (m) on reaching the age of majority; and
60
61 (3) assist parents of children with disabilities to be informed participants in the development and
62 implementation of the State's State improvement plan under subpart 1.

- 1
2 (d) APPLICATION REQUIREMENTS.--Each application for assistance under this section shall identify
3 with specificity the special efforts that the applicant will undertake--
4
5 (1) to ensure that the needs for training and information of underserved parents of children with
6 disabilities in the area to be served are effectively met; and
7
8 (2) to work with community-based organizations.
9
10 (e) DISTRIBUTION OF FUNDS.--
11
12 (1) IN GENERAL.--The Secretary shall make at least 1 award to a parent organization in each
13 State, unless the Secretary does not receive an application from such an organization in each
14 State of sufficient quality to warrant approval.
15
16 (2) SELECTION REQUIREMENT.--The Secretary shall select among applications submitted by
17 parent organizations in a State in a manner that ensures the most effective assistance to
18 parents, including parents in urban and rural areas, in the State.
19
20 (f) QUARTERLY REVIEW.--
21
22 (1) REQUIREMENTS.--
23
24 (A) MEETINGS.--The board of directors or special governing committee of each
25 organization that receives an award under this section shall meet at least once in each
26 calendar quarter to review the activities for which the award was made.
27
28 (B) ADVISING BOARD.--Each special governing committee shall directly advise the
29 organization's governing board of its views and recommendations.
30
31 (2) CONTINUATION AWARD.--When an organization requests a continuation award under this
32 section, the board of directors or special governing committee shall submit to the Secretary a
33 written review of the parent training and information program conducted by the organization
34 during the preceding fiscal year.
35
36 (g) DEFINITION OF PARENT ORGANIZATION.--As used in this section, the term 'parent organization'
37 means a private nonprofit organization (other than an institution of higher education) that--
38
39 (1) has a board of directors--
40
41 (A) the majority of whom are parents of children with disabilities;
42
43 (B) that includes--
44
45 (i) individuals working in the fields of special education, related services, and early
46 intervention; and
47
48 (ii) individuals with disabilities; and
49
50 (C) the parent and professional members of which are broadly representative of the
51 population to be served; or
52
53 (2) has--
54
55 (A) a membership that represents the interests of individuals with disabilities and has
56 established a special governing committee that meets the requirements of paragraph
57 (1); and
58
59 (B) has a memorandum of understanding between the special governing committee and
60 the board of directors of the organization that clearly outlines the relationship between
61 the board and the committee and the decisionmaking responsibilities and authority of
62 each.

1
2 **SEC. 683. COMMUNITY PARENT RESOURCE CENTERS.**
3

- 4 (a) IN GENERAL.--The Secretary may make grants to, and enter into contracts and cooperative
5 agreements with, local parent organizations to support parent training and information centers that
6 will help ensure that underserved parents of children with disabilities, including low-income parents,
7 parents of children with limited English proficiency, and parents with disabilities, have the training
8 and information they need to enable them to participate effectively in helping their children with
9 disabilities--
10
11 (1) to meet developmental goals and, to the maximum extent possible, those challenging
12 standards that have been established for all children; and
13
14 (2) to be prepared to lead productive independent adult lives, to the maximum extent possible.
15
16 (b) REQUIRED ACTIVITIES.--Each parent training and information center assisted under this section
17 shall--
18
19 (1) provide training and information that meets the training and information needs of parents of
20 children with disabilities proposed to be served by the grant, contract, or cooperative
21 agreement;
22
23 (2) carry out the activities required of parent training and information centers under paragraphs (2)
24 through (7) of section 682(b);
25
26 (3) establish cooperative partnerships with the parent training and information centers funded
27 under section 682; and
28
29 (4) be designed to meet the specific needs of families who experience significant isolation from
30 available sources of information and support.
31
32 (c) DEFINITION.--As used in this section, the term 'local parent organization' means a parent
33 organization, as defined in section 682(g), that either--
34
35 (1) has a board of directors the majority of whom are from the community to be served; or
36
37 (2) has--
38
39 (A) as a part of its mission, serving the interests of individuals with disabilities from such
40 community; and
41
42 (B) a special governing committee to administer the grant, contract, or cooperative
43 agreement, a majority of the members of which are individuals from such community.
44

45 **SEC. 684. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION**
46 **CENTERS.**
47

- 48 (a) IN GENERAL.--The Secretary may, directly or through awards to eligible entities, provide technical
49 assistance for developing, assisting, and coordinating parent training and information programs
50 carried out by parent training and information centers receiving assistance under sections 682 and
51 683.
52
53 (b) AUTHORIZED ACTIVITIES.--The Secretary may provide technical assistance to a parent training and
54 information center under this section in areas such as--
55
56 (1) effective coordination of parent training efforts;
57
58 (2) dissemination of information;
59
60 (3) evaluation by the center of itself;
61

- (4) promotion of the use of technology, including assistive technology devices and assistive technology services;
- (5) reaching underserved populations;
- (6) including children with disabilities in general education programs;
- (7) facilitation of transitions from--
 - (A) early intervention services to preschool;
 - (B) preschool to school; and
 - (C) secondary school to postsecondary environments; and
- (8) promotion of alternative methods of dispute resolution.

SEC. 685. COORDINATED TECHNICAL ASSISTANCE AND DISSEMINATION.

- (a) IN GENERAL.--The Secretary shall, by competitively making grants or entering into contracts and cooperative agreements with eligible entities, provide technical assistance and information, through such mechanisms as institutes, Regional Resource Centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.
- (b) SYSTEMIC TECHNICAL ASSISTANCE; AUTHORIZED ACTIVITIES.--
 - (1) IN GENERAL.--In carrying out this section, the Secretary shall carry out or support technical assistance activities, consistent with the objectives described in subsection (a), relating to systemic change.
 - (2) AUTHORIZED ACTIVITIES.--Activities that may be carried out under this subsection include activities such as the following:
 - (A) Assisting States, local educational agencies, and other participants in partnerships established under subpart 1 with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities.
 - (B) Promoting change through a multistate or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes.
 - (C) Increasing the depth and utility of information in ongoing and emerging areas of priority need identified by States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes.
 - (D) Promoting communication and information exchange among States, local educational agencies, and other participants in partnerships, based on the needs and concerns identified by the participants in the partnerships, rather than on externally imposed criteria or topics, regarding--
 - (i) the practices, procedures, and policies of the States, local educational agencies, and other participants in partnerships; and
 - (ii) accountability of the States, local educational agencies, and other participants in partnerships for improved early intervention, educational, and transitional results for children with disabilities.

1 (c) SPECIALIZED TECHNICAL ASSISTANCE; AUTHORIZED ACTIVITIES.--

- 2
- 3 (1) IN GENERAL.--In carrying out this section, the Secretary shall carry out or support activities,
- 4 consistent with the objectives described in subsection (a), relating to areas of priority or
- 5 specific populations.
- 6
- 7 (2) AUTHORIZED ACTIVITIES.--Examples of activities that may be carried out under this
- 8 subsection include activities that--
- 9
- 10 (A) focus on specific areas of high-priority need that--
- 11
- 12 (i) are identified by States, local educational agencies, and other participants in
- 13 partnerships;
- 14
- 15 (ii) require the development of new knowledge, or the analysis and synthesis of
- 16 substantial bodies of information not readily available to the States, agencies, and
- 17 other participants in partnerships; and
- 18
- 19 (iii) will contribute significantly to the improvement of early intervention, educational,
- 20 and transitional services and results for children with disabilities and their families;
- 21
- 22 (B) focus on needs and issues that are specific to a population of children with disabilities,
- 23 such as the provision of single-State and multi-State technical assistance and in-service
- 24 training--
- 25
- 26 (i) to schools and agencies serving deaf-blind children and their families; and
- 27
- 28 (ii) to programs and agencies serving other groups of children with low-incidence
- 29 disabilities and their families; or
- 30
- 31 (C) address the postsecondary education needs of individuals who are deaf or hard of
- 32 hearing.
- 33

34 (d) NATIONAL INFORMATION DISSEMINATION; AUTHORIZED ACTIVITIES.--

- 35
- 36 (1) IN GENERAL.--In carrying out this section, the Secretary shall carry out or support information
- 37 dissemination activities that are consistent with the objectives described in subsection (a),
- 38 including activities that address national needs for the preparation and dissemination of
- 39 information relating to eliminating barriers to systemic-change and improving early
- 40 intervention, educational, and transitional results for children with disabilities.
- 41
- 42 (2) AUTHORIZED ACTIVITIES.--Examples of activities that may be carried out under this
- 43 subsection include activities relating to--
- 44
- 45 (A) infants and toddlers with disabilities and their families, and children with disabilities and
- 46 their families;
- 47
- 48 (B) services for populations of children with low-incidence disabilities, including deaf-blind
- 49 children, and targeted age groupings;
- 50
- 51 (C) the provision of postsecondary services to individuals with disabilities;
- 52
- 53 (D) the need for and use of personnel to provide services to children with disabilities, and
- 54 personnel recruitment, retention, and preparation;
- 55
- 56 (E) issues that are of critical interest to State educational agencies and local educational
- 57 agencies, other agency personnel, parents of children with disabilities, and individuals
- 58 with disabilities;
- 59
- 60 (F) educational reform and systemic change within States; and
- 61
- 62 (G) promoting schools that are safe and conducive to learning.

(3) LINKING STATES TO INFORMATION SOURCES.--In carrying out this subsection, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

(e) APPLICATIONS.--An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

SEC. 686. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out sections 681 through 685 such sums as may be necessary for each of the fiscal years 1998 through 2002.

SEC. 687. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION, AND MEDIA SERVICES.

(a) IN GENERAL.--The Secretary shall competitively make grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AUTHORIZED ACTIVITIES.--

(1) IN GENERAL.--In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and utilization of technology.

(2) AUTHORIZED ACTIVITIES.--Activities that may be carried out under this subsection include activities such as the following:

(A) Conducting research and development activities on the use of innovative and emerging technologies for children with disabilities.

(B) Promoting the demonstration and use of innovative and emerging technologies for children with disabilities by improving and expanding the transfer of technology from research and development to practice.

(C) Providing technical assistance to recipients of other assistance under this section, concerning the development of accessible, effective, and usable products.

(D) Communicating information on available technology and the uses of such technology to assist children with disabilities.

(E) Supporting the implementation of research programs on captioning or video description.

(F) Supporting research, development, and dissemination of technology with universal-design features, so that the technology is accessible to individuals with disabilities without further modification or adaptation.

(G) Demonstrating the use of publicly-funded telecommunications systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

(c) EDUCATIONAL MEDIA SERVICES; AUTHORIZED ACTIVITIES.--In carrying out this section, the Secretary shall support--

(1) educational media activities that are designed to be of educational value to children with disabilities;

- 1
2
3 (2) providing video description, open captioning, or closed captioning of television programs,
4 videos, or educational materials through September 30, 2001; and after fiscal year 2001,
5 providing video description, open captioning, or closed captioning of educational, news, and
6 informational television, videos, or materials;
- 7 (3) distributing captioned and described videos or educational materials through such
8 mechanisms as a loan service;
- 9
10 (4) providing free educational materials, including textbooks, in accessible media for visually
11 impaired and print-disabled students in elementary, secondary, postsecondary, and graduate
12 schools;
- 13
14 (5) providing cultural experiences through appropriate nonprofit organizations, such as the
15 National Theater of the Deaf, that--
- 16 (A) enrich the lives of deaf and hard-of-hearing children and adults;
- 17 (B) increase public awareness and understanding of deafness and of the artistic and
18 intellectual achievements of deaf and hard-of-hearing persons; or
- 19 (C) promote the integration of hearing, deaf, and hard-of-hearing persons through shared
20 cultural, educational, and social experiences; and
- 21
22 (6) compiling and analyzing appropriate data relating to the activities described in paragraphs (1)
23 through (5).
- 24
25 (d) APPLICATIONS.--Any eligible entity that wishes to receive a grant, or enter into a contract or
26 cooperative agreement, under this section shall submit an application to the Secretary at such time,
27 in such manner, and containing such information as the Secretary may require.
- 28
29 (e) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated to carry out
30 this section such sums as may be necessary for each of the fiscal years 1998 through 2002..
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36 TITLE II--MISCELLANEOUS PROVISIONS

37 SEC. 201. EFFECTIVE DATES.

- 38 (a) PARTS A AND B-
- 39
40 (1) IN GENERAL- Except as provided in paragraph (2), parts A and B of the Individuals with
41 Disabilities Education Act, as amended by title I, shall take effect upon the enactment of this
42 Act.
- 43
44 (2) EXCEPTIONS-
- 45 (A) IN GENERAL- Sections 612(a)(4), 612(a)(14), 612(a)(16), 614(d) (except for paragraph
46 (6)), and 618 of the Individuals with Disabilities Education Act, as amended by title I,
47 shall take effect on July 1, 1998.
- 48 (B) SECTION 617- Section 617 of the Individuals with Disabilities Education Act, as
49 amended by title I, shall take effect on October 1, 1997.
- 50
51 (C) INDIVIDUALIZED EDUCATION PROGRAMS AND COMPREHENSIVE SYSTEM OF
52 PERSONNEL DEVELOPMENT- Section 618 of the Individuals with Disabilities
53 Education Act, as in effect on the day before the date of the enactment of this Act, and
54 the provisions of parts A and B of the Individuals with Disabilities Education Act relating
55 to individualized education programs and the State's comprehensive system of
56 personnel development, as so in effect, shall remain in effect until July 1, 1998.
- 57
58
59
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61

(D) SECTIONS 611 AND 619- Sections 611 and 619, as amended by title I, shall take effect beginning with funds appropriated for fiscal year 1998.

(b) PART C- Part C of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on July 1, 1998.

(c) PART D-

(1) IN GENERAL- Except as provided in paragraph (2), part D of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on October 1, 1997.

(2) EXCEPTION- Paragraphs (1) and (2) of section 661(g) of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on January 1, 1998.

SEC. 202. TRANSITION.

Notwithstanding any other provision of law, beginning on October 1, 1997, the Secretary of Education may use funds appropriated under part D of the Individuals with Disabilities Education Act to make continuation awards for projects that were funded under section 618 and parts C through G of such Act (as in effect on September 30, 1997).

SEC. 203. REPEALERS.

(a) PART I.-- Effective October 1, 1998, part I of the Individuals with Disabilities Education Act is hereby repealed.

(b) PART H.--Effective July 1, 1998, part H of such Act is hereby repealed.

(c) PARTS C, E, F, AND G--Effective October 1, 1997, parts C, E, F, and G of such Act are hereby repealed.

Passed the House of Representatives May 13, 1997.

Attest:

ROBIN H. CARLE,
Clerk.